CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF LOUISIANA.

No. 7357.

E. D. MORGAN & J. A. RAYNOR, TRUSTEES,

vs.

NEW ORLEANS, MOBILE & TEXAS RAILROAD CO. ET ALS.

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UNITED STATES OF AMERICA,
Circuit Court of the United States, Eastern District of Louisiana, } *ss.*

E. D. MORGAN & J. A. RAYNOR, trustees,
vs.
NEW ORLEANS, MOBILE & TEXAS RAILROAD CO. et als. } No. 7357.

Proceedings had in the above-entitled cause from the 21st day of May, 1880, to the 24th day of June, 1880, inclusive:

1 *Report of Special Master upon Trustees' Statement.—Filed May 27th, 1882.*

In the Circuit Court of the United States for the District of Louisiana.

E. D. MORGAN and J. A. RAYNOR, trustees, &c.,
vs.
NEW ORLEANS, MOBILE and TEXAS RAILROAD CO. et al. } No. 7357.

To the Honorable the Judges of said Court:

The undersigned, special master in the above-entitled cause, respectfully reports: That pursuant to the 5th section of the decree entered herein on the fifth day of March, 1880, the said complainants have submitted a statement of B. Stephenson, their auditor, showing the amounts due for the principal and coupons of the first mortgage bonds described in the bill in this cause, as well as the amount of interest due upon each of the outstanding coupons, from the respective dates of maturity thereof up to and including the 24th day of April, 1880, when the property of said defendants was sold, pursuant to the decree aforesaid, as follows, to wit:

Am't due for 4,000 bonds @ $1,000 each.....	$4,000,000 00
" for unpaid coupons up to Jan'y 1, '80.....	1,903,040 00
Total am't of principal and unpaid interest up to January 1, 1880.....	$5,903,040 00
Am't due for interest on coupons past due, as per aud'rs statement, up to April 21, 1880.....	404,744 32

I further report that I have carefully examined the same and find it to be correctly stated, and recommend that it be approved and shall be the basis upon which the trustees are to disburse
2 the proceeds of the sale of said property.

The statements aforesaid, marked "Exhibit A," is submitted herewith.

May 27, 1880.

Respectfully submitted,
(Signed) F. A. WOOLFLEY,
Special Master.

3 *Statement of principal of first mortgage bonds and of the interest thereon due and unpaid to and including coupon matured January 1, 1880.—Filed May 27, 1880.*

Bonds issued and outstanding under first mortgage executed by New Orleans, Mobile, and Chattanooga Railroad Company under date of January 1st, 1869, on the rights, franchises, and property in and between the cities of Mobile and New Orleans.

4,000 bonds, Nos. 1 to 4,000, inclusive, @ $1,000 each..... $4,000,000 00

INTEREST ACCRUED ON ABOVE BONDS UNPAID.

Coupon due.....	January 1, 1871	5	@ $40	$200 00	
"	July 1, 1871	10	"	400 00	
"	July 1, 1872	1	"	40 00	
"	January 1, 1873	16	"	640 00	
"	July 1, 1873	12	"	480 00	
"	January 1, 1874	31	"	1,240 00	
"	July 1, 1874	3501	"	140,040 00	
"	January 1, 1875	4000	"	160,000 00	
"	July 1, 1875	"	"	160,000 00	
"	January 1, 1876	"	"	160,000 00	
"	July 1, 1876	"	"	160,000 00	
"	January 1, 1877	"	"	160,000 00	
"	July 1, 1877	"	"	160,000 00	
"	January 1, 1878	"	"	160,000 00	
"	July 1, 1878	"	"	160,000 00	
"	January 1, 1879	"	"	160,000 00	
"	July 1, 1879	"	"	160,000 00	
"	January 1, 1880	"	"	160,000 00	
					$1,903,040 00
January 1, 1880, principal and unpaid interest.....					$5,903,040 00

TOTAL VALUE OF INTEREST ON COUPONS PAST DUE.

5 due.....	January 1, 1871	@	$26 07	$130 35	
10	July 1, 1871	"	24 67	246 70	
1	July 1, 1872	"	21 87	21 87	
16	January 1, 1873	"	20 47	327 52	
12	July 1 1873	"	19 07	228 84	
31	January 1, 1874	"	17 67	547 77	
3501	July 1, 1874	"	16 27	56,961 27	
4000	January 1, 1875	"	14 87	59,480 00	
4000	July 1, 1875	"	13 47	53,880 00	
4000	January 1, 1876	"	12 07	48,280 00	
4000	July 1, 1876	"	10 67	42,680 00	
4000	January 1, 1877	"	9 27	37,080 00	
4000	July 1, 1877	"	7 87	31,480 00	
4000	January 1, 1878	"	6 47	25,880 00	
4000	July 1, 1878	"	5 07	20,280 00	
4000	January 1, 1879	"	3 67	14,680 00	
4000	July 1, 1879	"	2 27	9,080 00	
4000	January 1, 1880	"	87	3,480 00	
Interest to April 24, 1880.....					$404,744 32

E. & O. E.—NEW ORLEANS, *May* 1, 1880.

(Signed) B. STEPHENSON, *Aud'r.*

Referred to and submitted with report of submission of this statement of the trustees May 27, 1880.

4 *Entry in Chancery Order Book, May 27th, 1880.*

E. D. MORGAN and JAMES A. RAYNOR, trustees,
v.
NEW ORLEANS, MOBILE & TEXAS RAILROAD CO. et al. } No. 7357.

The parties in interest herein are hereby notified that F. A. Woolfley, special master herein, has this day filed his report on the submission of the complainants' statement of the amount due under the first mortgage, &c.

5 *Order upon report of Special Master upon submission of Trustees' Statement of amounts due under first mortgage.—Entered and filed May 27th, 1880.*

E. D. MORGAN and J. A. RAYNOR, trustees,
v.
NEW ORLEANS, MOBILE & TEXAS RAILROAD CO. et al. } No. 7357.

This cause came on to be heard upon the report of the special master herein upon the submission of the trustees herein of their statement of the amounts due for the principal and coupons of the first-mortgage bonds "described in the bill in this cause," as well as the amount of interest due upon each of the outstanding coupons from the respective dates of maturity thereof, &c.

On consideration whereof, it is ordered that the recommendations of the special master herein be and the same are hereby adopted, and that Edwin D. Morgan and James A. Raynor, said complainants, disburse the proceeds of the sale of said property in accordance with their said statement reported upon herein.

(Signed) EDWARD C. BILLINGS, *Judge.*

6 *Petition of Trustees for Discharge, &c.—Filed May 29, 1880.*

Circuit Court of the United States, District of Louisiana.

EDWIN D. MORGAN, JAMES A. RAYNOR, trustees and receivers, plaintiffs,
v.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, successor, OLIVER AMES, W. S. WILLIAMS et al., defendants. } In Chancery. No. 7357.

To the honorable the Judges of the Circuit Court of the United States of the district aforesaid:

The petition of Edwin D. Morgan and James A. Raynor, trustees and plaintiffs in the suit above named, respectfully represents: That since the date of their last report communicating to this court that they had sold the property contained in the deed of trust filed in this cause, and that they were prepared to execute the deed to the purchaser or their assigns upon a compliance with the conditions of the

sale and of the decrees of this honorable court, your petitioners have received from the purchasers at the sale, George Bliss, L. Von
7 Hoffman, and Oliver Ames, in cash, nine hundred and sixty-three thousand seven hundred and ninety 6-100 dollars.

That they received mature coupons of July first, 1874, and subquent thereto, with the interest thereon till the day of the sale, viz., 24th April, 1880, amounting to two millions two hundred and twenty-four thousand five hundred and thirty-one 48-100 dollars, and also 3,868 of the first-mortgage bonds, with coupons maturing after the date of the sale, and endorsed credit on those bonds severally as a payment, two hundred and one 72-100 dollars, amounting to seven hundred and eighty thousand two hundred and fifty-two 96-100 dollars, making a total receipt of three millions nine hundred and sixty-eight thousand five hundred and seventy-four 50-100 dollars.

There was a sum of money in the hands of the trustees besides the bid, and in making the distribution of that sum the bond-
8 holders have had their full share.

The committee, consisting of Bliss, Von Hoffman, and Ames, and who were the purchasers, owned at the sale three thousand eight hundred and sixty-eight bonds. There are only one hundred and thirty-two bonds which were not owned by them, and which have not been presented to the trustees.

There is reserved for the payment of these bonds and coupons seventy-eight thousand seven hundred and forty-nine 79-100 dollars, besides a sum to be paid on the bonds of two hundred and one 72-100 dollars, amounting to $26,629.39.

Your petitioners further state that there were outstanding a number of coupons detached from bonds and maturing prior to the default of the company in 1874. These, with the interest, amount to four thousand five hundred and three 65-100, and money is reserved and has been in part appropriated to the payment of this debt.
9 Your petitioners will not be able to make these payments in full before the adjournment of the court, because of the non-presentation of the bonds and coupons, and they suggest that the same be deposited in the United States Trust Company of New York for the present, and that they be permitted to make a further report. The aggregate sum matured and to be subject to the order is one hundred and nine thousand eight hundred and eighty-two 23-100 dollars.

Your petitioners state that all of the preferential charges have been paid.

Your petitioners further state that this settlement with the purchasers at the sale having been satisfactorily made, they received from them an assignment of the bid made by them at the sale, and which has already been reported to the court, and thereupon your petitioners delivered a deed to the New Orleans, Mobile and Texas Railroad Company, as reorganized, conforming to that reported.

The assignment made by Bliss, Von Hoffman, and Ames, the
10 purchasers at the sale, is filed with this petition.

Your petitioners further represent that they have surren-

dered to the agents of the New Orleans, Mobile and Texas Railroad Company (reorganized) the entire property included in the inventory, except some locomotives, about which there are suits in detinue pending in the city of Mobile, and which, under the conditions of the suits, are to be surrendered in case your petitioners are cast. These are only conditionally delivered, and the corporation purchasing have undertaken the charge of the suits.

Your petitioners further represent that they are prepared with a statement of the accounts to be rendered, with the vouchers, and are desirous to have an order to discharge them from the post of receivers, and to confirm their disposition of the property they have had in charge, and for that purpose pray an examination be made by the master.

(Signed) J. A. CAMPBELL,
Solicitor.

11 *Statement of Trustees.—Filed May 29th*, 1880.

Memorandum for report of trustees regarding the sale of the road, the receipt of payment therefor, and the disbursement of money for preferential charges, matured coupons and interest thereon, and the amount applicable to the principal of the bonds.

Prior to the sale the amount required to be bid to meet the preferential charges was fixed by the trustees and the master, in compliance with the provision of the decree of the court, at $900,000.

At the sale there was bid, by the representative of the committee of the bondholders—George Bliss, Louis A. Von Hoffman, and Oliver Ames—the sum of $4,000,000, at which sum the property was sold to the said committee.

There was received by the trustees on account of the bid—

Cash		$963,790 06
Estimated to be divided as follows:		
On account of preferential charges	$855,000 00	
For coupons and interest thereon.....	81,162 46	
For 132 bonds not received on account of the bid.....	27,627 60	
Matured coupons, with interest thereon, amounting to.....		2,224,531 48
3,868 bonds, with coupon No. 23 due July 1, 1880, and all coupons to become due subsequent to that date, attached, estimated at $209.30 each, amounting to...		809,572 40
		$3,997,893 94

12 Leaving balance required $2,106.06, and any change in the value of the bonds as should be determined by the final account

to be made up from money in the hands of the trustees—received from earnings of the road—as provided for in the decree of the court.

Amount of bid for the property.....			$4,000,000 00
Amounts paid therefrom—			
1st. Preferential charges, as determined by decrees of the court:			
Trustees' certificates.....	$700,000 00		
E. D. Morgan, trustee, Jan. 13, '75, to May 13, '80.....	53,333 33		
J. A. Raynor, trustee, Jan. 13, '75, to May 13, '80.....	80,000 00		
Jno. A. Campbell, trustee, Jan. 13, '75, to May 13, '80.....	32,000 00		
Jno. E Parsons, trustee, Jan. 13, '75, to May 13, '80.....	15,000 00		
F. A. Woolfley, master	5,000 00		
2d. Coupons matured July 1, 1874, and subsequent thereto, with interest			
13 thereon to April 24, 1880—paid by being received on account of bid.....	2,224,531 48		
3d. Held for payment of coupons matured prior to July 1, 1874, and interest thereon from maturity to April 24, 1880.....	4,503 05		
4th. Held for payment of coupons matured on and subsequent to July 1, 1874, and interest thereon from maturity to April 24, 1880.....	78,749 79		
5th. Amount held for payment upon 132 bonds and coupons maturing subsequent to April 24, 1880, viz.: $201.72 to be paid and indorsed upon each bond when presented	26,629 39		
6th. Amount paid on 3,868 bonds and coupons maturing subsequent to April 24, 1880, by being received on account of the bid, viz.: $201.72 on account of and to be indorsed on each bond.....	780,252 96		
			$4,000,000 00

The above shows the amount of cash required to be taken from the money in hands of the trustees—received from the business of the road and added to the amount of cash received on ac-
14 count of the bid, as provided for by the decree of the court—to be $31,425.50, and that the amount to be paid and indorsed

upon the principal and unmatured coupons of each of the four thousand bonds is $201.72. The amount paid for coupons and interest thereon, and the amount held for such payments when balance of coupons are presented, as shown by this statement, corresponds with the statement of unpaid coupons and interest thereon filed by the master in the records of the court. Sundry small bills for advertising sale of road, expenses of master, &c., have been paid from money in the hands of the trustees—received from the business of the road—and appear in account of disbursements for expenses of road. Unless the court otherwise orders, the money held by the trustees for the payment of matured coupons and interest thereon, and for payment on account of principal and unmatured coupons of the bonds now outstanding, will be deposited in the United States Trust Company of New York, and there held until required
15 for such payments.

The conditions of the sale were complied with; payment was received as hereinbefore stated; the committee named transferred their interest to the New Orleans, Mobile and Texas Railroad Company, as reorganized, as per their assignment filed herewith. The property sold was delivered to D. W. C. Rowland in accordance with the order of the president of the said railroad company, attached to the said assignment and filed therewith.

(Signed) E. D. MORGAN,
JAMES A. RAYNOR,
Trustees.

New York, May 24, 1880.

16 *Assignment of Bid.—Filed May 29th, 1880.*

Whereas, under and in accordance with the terms of an agreement dated February 10, 1880, between certain bondholders of the New Orleans, Mobile and Texas Railroad Company, formerly the New Orleans, Mobile and Chattanooga Railroad Company, of the first part, Louis A. Von Hoffman, George Bliss, and Oliver Ames, committee of such bondholders, of the second part, and William S. Williams and David Thomson, purchasers, of the third part:

We, the said Louis A. Von Hoffman, George Bliss, and Oliver Ames, as such committee at the sale of the road, equipments, franchises, and property formerly of the said New Orleans, Mobile and Texas Railroad Company, held upon the 24th day of April, 1880, did bid in and purchase the same under the direction of said William S. Williams and David Thomson for the purpose of carrying out the provisions of the said agreement;

And whereas the said William S. Williams and David Thom-
17 son have duly delivered to us their request under their hands and seals that we do in accordance with the terms of said agreement of February 10th, 1880, assign our said bid and purchase of said railroad, equipments, franchises, and property unto the New Orleans, Mobile and Texas Railroad Company, as reorganized: Now, therefore, in compliance with said request, and in consideration of

one dollar to us in hand paid, the receipt whereof is hereby acknowledged, we, Louis A. Von Hoffman, George Bliss, and Oliver Ames, committee as aforesaid, do hereby assign, transfer, and set over unto the New Orleans, Mobile and Texas Railroad Company, as reorganized, the bid and purchase made by us of the said railroad, equipments, franchises, and property formerly of the said New Orleans, Mobile and Texas Railroad Company, so bid in and bought by us upon the 24th day of April, 1880, under and in accordance with the provisions of said agreement of February 10th, 1880, and for
18 the purpose of carrying out the same.

In witness whereof we have hereunto set our hands and seals this thirteenth day of May, one thousand eight hundred and eighty.

(Signed) GEORGE BLISS, [SEAL.]
(") LOUIS A. VON HOFFMAN, [SEAL.]
(") OLIVER AMES, [SEAL.]
Committee.

Sealed and delivered in the presence of—
EDWIN F. CAREY.
D. F. MERRITT.

STATE OF NEW YORK, }
City and County of New York, } *ss.*

Be it remembered that on this thirteenth day of May, A. D. 1880, before me, Edwin F. Corey, also known as Edwin F. Corey, junior, a commissioner for the State of Tennessee, duly commissioned and qualified by executive authority, under the laws of said State, to take and certify depositions and to receive the acknowledgement of deeds and other instruments to be used or recorded therein; also a commissioner for the State of Alabama, duly appointed by the
19 governor thereof, under the laws of said State, to take and certify depositions and to receive acknowledgement of deeds and other instruments to be used or recorded therein; and also a commissioner of the State of Mississippi, duly commissioned and qualified by the executive authority thereof, under the laws of said State, to take and certify depositions and to receive the acknowledgements of deeds and other instruments to be used or recorded therein; and also a commissioner for the State of Louisiana, duly commissioned and qualified by the executive authority, under the laws of said State, to take and certify depositions and to receive the acknowledgement of deeds to be used or recorded in said State, came George Bliss, Louis A. Von Hoffman, and Oliver Ames, whose names are signed to the foregoing instrument, to me personally known, and signed the said instrument in my presence, and that of the two witnesses whose names are thereunto subscribed as such, and said George Bliss, Louis A. Von Hoffman, and Oliver Ames severally acknowledged that being informed of the contents of said
20 instrument they had executed, signed, sealed, and delivered

the same voluntarily for the consideration and purposes therein mentioned and set forth on the day the same bears date.

In witness whereof, I have hereunto set my hand and affixed the seals of the said States aforesaid, the day and year last above written.

[SEAL.] (Signed) EDWIN F. COREY, JR.,
Commissioner for the State of Tennessee, resident in New York City.

[SEAL.] (Signed) EDWIN F. COREY, JR.,
Commissioner for the State of Alabama, resident in New York City.

[SEAL.] (Signed) EDWIN F. COREY,
Commissioner for the State of Mississippi, resident in New York City.

[SEAL.] (Signed) EDWIN F. COREY,
Commissioner for the State of Louisiana, resident in New York City.

21 *Receipt of W. S. Williams, annexed to Assignment of Bid.*

Four locomotives and the Mobile office furniture having been taken in detinue, and being described in the bonds given in suits relative to taxes, it is understood that the delivery of such personal property is not made at present with the rest, but are delivered conditionally. All the residue of the property, excepting any moneys and accounts of the New Orleans, Mobile and Texas Railroad Company, the trustees and receivers will deliver over to Mr. D. W. C. Rowland.

THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY, as reorganized,
By W. S. WILLIAMS, *President.*

May 13, 1880.

22 *Order referring petition, &c., of Trustees of May 29, 1880.—Entered and filed May 29, 1880.*

Circuit Court of the United States, District of Louisiana.

EDWIN D. MORGAN and JAMES A. RAYNOR, trustees and receivers,
v.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD COMPANY and others. } No. 7357.

The court, upon consideration of the petition of the plaintiffs representing that the sale of the property in their possession as trustees and receivers had been completed by the payment of the money by the purchasers, and by the delivery of the deeds to the New Orleans, Mobile and Texas Railroad Company, as reorganized, setting forth the sale and the transfer of the property described in the inventory to that company, pursuant to the directions of this court, the court sanctions the said proceedings on the part of the plaintiffs as trustees and receivers, and confirms their acts in the premises, and discharges them as receivers from any other care of the property aforesaid.

23 And the said plaintiffs having represented in their petition that they had disbursed the moneys received, in so far as the claimants had presented themselves or could be ascertained, and that they were ready to close their trust, except as to a small number of creditors that could not be ascertained, and proposing to make a deposit for them:

The court orders and decrees that the master examine the reports and vouchers, and that he ascertain whether an order for discharge from further account be made.

(Signed) EDWARD C. BILLINGS,
Judge.

May 29, 1889.

24 NEW ORLEANS, *May 30th*, 1880.

STATEMENT FILED MAY 31, 1880.

Condensed Statement of Earnings and Expenses for five years and three months ending April 30th, 1880.

Earnings.

Earnings from transportation of passengers	$1,370,805 55	
" " " freight	2,013,953 43	
" " " mails	113,428 66	
" " " express freight	70,246 89	
" " telegraph service	2,907 13	
" " rents	17,274 63	
" " miscellaneous sources	75,166 23	
Total earnings for five years and three months		$3,663,782 52

Expenses for Operating the Road.

MAINTENANCE OF ROADWAY.

Materials and tools for repairs of tracks and crossings	$10,095 45	
Foreman, sub-division men, and train service	315,937 41	
Material for repairs of bridges and waterways	19,222 83	
Labor for repairs of bridges and waterways	25,980 20	
Drawbridge tenders and watchmen	24,793 68	
Oil and waste for drawbridges	1,115 26	
Wood for stations and sub-divisions	1,490 54	
Wood for drawbridges	71 81	
Oil and waste for sub-division men	143 07	
Construction and repairs of hand-cars	1,888 53	
		$400,738 78

PASSENGER EXPENSE.

Agents, ticket sellers, and rents	$75,438 04
Sundry office expenses	3,379 18
Conductors, baggagemen, and brakemen	70,608 19
Enginemen and firemen of passenger trains	49,249 24
Repairs of passenger and baggage cars	62,585 88
Oil and waste for passenger and baggage cars	12,671 83

Cleaning and inspecting passenger and baggage cars	16,547 77	
Wood for locomotives of passenger trains	53,872 22	
Wood for use in passenger cars	266 15	
Sleeping car expense and mileage	10,697 56	
Baggage checks	149 58	
New stock passenger tickets	1,638 57	
Mobile line expense (through passenger business)	31,739 63	
Light and fuel for offices	443 66	
Printing and stationery	1,256 60	
Advertising	4,255 85	
Contingent expenses	697 14	
		395,497 09

FREIGHT EXPENSE.

Agents and clerks	$109,696 64	
Sundry office expenses	3,100 21	
Labor handling merchandise	90,366 53	
Conductors and brakemen	58,209 97	
Enginemen and firemen of freight trains	66,405 95	
Repairs of freight cars	49,757 31	
Oil and waste for freight cars	17,370 83	
Oiling and inspecting freight cars	6,994 48	
Wood for locomotives of freight trains	49,472 74	
Mileage on foreign freight cars	11,226 54	
Fuel and light for offices	3,823 14	
Stationery and printing	3,228 55	
Contingent expenses	1,440 84	
		471,093 73

25 DAMAGES AND OVERCHARGES.

Overcharges	$10,086 41	
Loss and damage of merchandise	7,282 57	
Loss and damage to baggage	749 41	
Animals killed or injured	14,195 05	
Loss and damage by fire	2,053 33	
Persons killed or injured	666 25	
		35,033 02

GENERAL EXPENSE.

Superintendent's and general office salaries	$66,634 66	
Salaries of master mechanics and clerks in shops (Mobile and New Orleans)	31,727 55	
Sundry office expense	12,099 73	
Telegraph operators' expense	25,397 31	
Stationery and printing	9,558 28	
Advertising	7,099 57	
Yardmasters, switchmen, flagmen, and watchmen	46,841 38	
Labor at wood and water stations	9,826 33	
Wood for wood and water stations	1,221 14	
Repairs of locomotives	85,757 86	
Oil and waste for locomotives	16,983 55	
Cleaning and inspecting locomotives	40,155 82	
Supplies for stations	2,872 67	
Oil and waste for stations	1,958 54	
Oil and waste for watchmen	302 86	
Oil and waste for machinery in Mobile shops	1,761 42	
Oil and waste for machinery in New Orleans shops	318 76	

United States postage	1,775 98	
United States mail expense	3,908 98	
Legal expenses	21,035 33	
Taxes	18,943 21	
Insurance	2,149 50	
Fuel for general offices	137 00	
Contingent expenses	4,298 81	
Repairs of tools and fixtures in shops	6,497 20	
" wood and water stations	4,944 12	
" buildings and platforms	7,402 50	
" shops, yard-buildings, yards, and fences	8,728 62	
Turn-tables and engine-houses	47 50	
New buildings	8,501 62	
New tools and fixtures in shops	285 00	
		450,172 80
Total expenses for operating the road for five years and three months		$1,752,535 42
Amount of earnings over operating expenses during five years and three months		$1,911,247 10

Expenses for Extraordinary Repairs.

Repairs of roadway:		
Cross-ties purchased	$198,427 11	
Switches, joints, and spikes purchased	29,944 52	
Materials and tools for repairs of track and road crossings	42,016 02	
Foremen, subdivision men, and train service men	139,827 17	
Enginemen and firemen of road service trains	16,347 01	
Oil and waste for road service trains	1,680 52	
Oiling and inspecting road service trains	1,315 20	
Wood for locomotives of road service trains	11,168 03	
Repairs of road service trains	4,410 96	
Repairs of streets in New Orleans	3,603 08	
Filling in wharf at Mobile and for foundation for depot	7,205 06	
		455,944 68
Repairs of wharf at New Orleans		5,052 86
Rebuilding bridges of creosoted timber:		
Labor, rebuilding bridges and waterways of wood	$26,743 67	
Material for rebuilding bridges and waterways of wood	19,711 72	
		46,455 39
Filling in trestle bridges		66,531 64
Raising grade and ballasting track		60,971 75
Repairs of buildings and machinery:		
Repairs of depots, subdivision buildings, and platforms	$40,262 14	
Repairs of shops, yard buildings, yards, and fences	45,378 03	
New buildings erected	35,510 28	
Repairs of tools and fixtures in shops	15,236 98	
Repairs of wood and water stations	8,850 02	
New tools and fixtures in shops	16,572 13	
		161,809 58

Turn-tables and engine-houses		6,244 72	
Fairbanks' scales purchased and erected		2,151 00	
Repairs of rolling stock:			
Repairs of locomotives	$47,129 66		
Repairs of passenger and baggage cars	84,759 81		
Repairs of freight cars	75,009 12		
Repairs and construction of hand cars	4,163 04		
		211,061 63	
Oil and waste for subdivision men		393 19	
New stock of passenger tickets		2,020 03	
Printing and stationery		1,824 75	
Telegraph expenses		398 60	
Legal expenses (in excess of amount charged to operating expenses)		26,912 30	
Superintendence and general expenses		67,111 32	
Construction of postal cars		7,930 67	
Repairs of Bay St. Louis Bridge (repairs of that portion of it destroyed by fire Oct. 24, '79)		8,057 02	
Total expenses for extraordinary repairs during five years and three months			1,130,871 13
Amount of earnings over operating and extraordinary expenses during five years and three months.			$780,375 97

Referred to and submitted with report of special master June 1, 1880.

26 *Statement of Special Expenses during Five Years and Three Months ending April 30th, 1880.—Filed May 31, 1880.*

Construction of Six Iron Bridges.

Creosote works:		
Cost of construction	$38,089 78	
Repairs to works	3,264 84	
Fuel and sundry supplies	1,986 71	
Superintendence and labor before treating timber	1,645 15	
Cost of rebuilding works destroyed by fire March 3d, 1877	18,748 39	
Repairs to works, subsequent to March 3d, 1877, and cost of additional cylinder and super-heater	16,478 07	
		$80,212 94
Creosote oil:		
Cost of oil purchased	$60,190 23	
Labor creosoting piles and timber	13,603 58	
		73,793 81
Iron work:		
Clark, Reeves & Co., contract	$240,000 00	
" for increased length of two spans of Rigolet's Bridge	2,772 00	
Clark, Reeves & Co., contract for construction and erection of Pearl River draw	2,860 00	
Louisville Bridge and Iron Co., centre pier at Rigolet's	4,011 41	
		249,643 41

Sundry work and material:			
Clark, Reeves & Co., extra painting, etc.....	$2,697 90		
Cement for centre pier of Rigolet's Draw Bridge.....	501 55		
Iron wheels for same.....	96 12		
Keystone Bridge Co.....	190 86		
		3,486 43	
Piles and timber:			
Cost of same.....	$40,029 27		
Cost of moving same.....	4,092 67		
		44,121 94	
Pile-drivers and barges:			
Cost of construction and repairs.....	$10,206 06		
Towing same.....	857 50		
Fuel, oil, and sundry supplies.....	3,099 42		
Labor employed driving piles.....	16,506 65		
		30,669 63	
Divers' work:			
Securing braces on piles, and cutting out old piles under water.....		4,189 00	
Material, tools, &c.:			
Labor and material furnished by Mobile shops.....	$3,773 66		
Material and tools purchased.....	3,280 57		
		7,054 23	
Sundry labor:			
Labor grading approach at Rigolet's.....	$1,982 40		
Labor preparing abutment pits.....	260 00		
Labor on superstructure.....	10,496 32		
Painting and extra work at Pearl River.....	400 00		
		13,138 72	
Salary of civil engineer.....		2,850 00	
Interest and discount on certificates of indebtedness, accrued prior to August 1st, 1878.....		172,243 93	
			$681,404 04
Iron rails:			
Purchase of 456 tons 1,586 lbs.....		$26,538 30	
Purchase of 723 tons 700 lbs., applying on account a like amount of old rails.....		22,976 09	
Rerolling 499 tons 1,295 lbs.....		16,985 65	
			66,500 04
Steel rails:			
Purchase of 3,855 tons 1,865 lbs.....		$195,245 81	
Purchase of 2,335 tons 1,150 lbs., in exchange for a like amount of old rails.....		84,124 29	
Purchase of 1,024 tons 1,280 lbs., in exchange for 943 tons 560 lbs. of old rails, sold at $16 per ton, and 2,000 tons sold at $17 per ton.....			
Purchase of 2,501 tons 1,476 lbs. (during 1879).....	$115,130 12		
Less proceeds of sale of old iron rails.....	65,608 88		
		49,521 24	
			328,891 34
Sleeping cars:			
Cost of two cars, complete, delivered at Mobile, including cost of alterations of trucks.....			23,546 93
Purchase of lands:			
Land for ballast pit.....		$1,452 50	
Right of way in Mobile.....		500 00	
Right of way at Pascagoula and Biloxi.....		825 00	

Land in Mobile for increased depot facilities..	14,000 00	
Rent paid for right of way in Mobile (for three years).....	1,200 00	
		17,877 50
Interest and discount on certificates of indebtedness after August 1st, 1878, date of the completion of six iron bridges.....		123,153 05
Rebuilding bridges over Bay St. Louis and Biloxi Bay (contract).....		113,696 82
Raising grade and ballasting track (contract) between Pearl River and 14-mile post.....		55,629 26
The New Orleans, Mobile and Texas R. R. Co. (excess of expenditures over receipts on account of business of that company prior to February 1st, 1875).....		20,171 39
Preferential charges of the trust, paid under order of the court.....		185,333 33
Special expenses during five years and three months.....		$1,616,303 70

E. & O. E.—B. STEPHENSON, *Auditor.*

JNO. J. HOWELL, *Treasurer.*

Referred to and submitted with report of special master June 1, 1880.

27 *Synopsis of Earnings, Expenses, etc., for Five Years and Three Months ending April 30th, 1880.—Filed May 31, 1880.*

Earnings from February 1st, 1875, to January 31st, 1876, inclusive.....	$701,054 57	
LESS:		
Operating expenses for the same period.....	278,290 70	
Excess of earnings over operating expenses.....		$422,763 87
Earnings from February 1st, 1876, to January 31st, 1877, inclusive.....	$672,441 20	
LESS:		
Operating expenses for the same period.....	308,163 01	
Excess of earnings over operating expenses.....		364,278 19
Earnings from February 1st, 1877, to January 31st, 1878, inclusive.....		730,010 06
LESS:		
Operating expenses for the same period.....	339,354 49	
Excess of earnings over operating expenses.....		390,655 57
Earnings from February 1st, 1878, to January 31st, 1879, inclusive.....	$672,986 11	
LESS:		
Operating expenses for the same period.....	305,150 37	
Excess of earnings over operating expenses.....		367,835 74
Earnings from February 1st, 1879, to January 31st, 1880, inclusive.....	$726,378 00	
LESS:		
Operating expenses for the same period.....	415,046 83	
Excess of earnings over operating expenses.....	$311,331 17	
Earnings from February 1st, 1880, to April 30th, 1880, inclusive.....	160,912 58	

LESS:		
Operating expenses for the same period	106,530 02	
Excess of earnings over operating expenses		54,382 56
Excess of earnings over operating expenses in five years and three months		$1,911,247 10
Extraordinary expenses during 12 months ending January 31st, 1876	$281,964 67	
Extraordinary expenses during 12 months ending January 31st, 1877	277,031 58	
Extraordinary expenses during 12 months ending January 31st, 1878	232,174 95	
Extraordinary expenses during 12 months ending January 31st, 1879	220,234 30	
Extraordinary expenses during 12 months ending January 31st, 1880	105,326 37	
Extraordinary expenses during 3 months ending April 30th, 1880	14,139 26	
		$1,130,871 13
Excess of earnings over operating and extraordinary expenses for five years and three months		$780,375 97
Special expenses during 12 months ending January 31st, 1876	$88,199 82	
Special expenses during 12 months ending January 31st, 1877	467,709 77	
Special expenses during 12 months ending January 31st, 1878	286,477 90	
Special expenses during 12 months ending January 31st, 1879	251,071 42	
Special expenses during 12 months ending January 31st, 1880	259,647 52	
Special expenses during 3 months ending April 30th, 1880 $77,863 94		
Special preferential charges under the trust 185,333 33		
	263,197 27	
Total of special expenses for five years and three months		$1,616,303 70
The trust estate was sold for	$4,000,000 00	
Of this sum the trustees, under decree of court, furnished from money in their hands resulting from business of the road	31,425 50	
Leaving as paid by the purchasers		$3,968,574 50
Excess of earnings over operating and extraordinary expenses for five years and three months, as shown above		780,375 97
		$4,748,950 47
Amount of special expenses paid by the trustees during same period, as shown above, including preferential charges	$1,616,303 70	
The trustees, under order of the court, have also paid—		
Coupons matured July 1st, 1874, and subsequent thereto, with interest thereon to April 24th, 1880, paid by being received on account of bid	2,224,531 48	
Amount of 3868 bonds and coupons maturing subsequent to April 24th, 1880, paid by being received on account of the bid, viz. $201.72, on account of and to be endorsed on each bond	780,252 96	

Amount of excess of available assets over liabilities, as shown by balance sheet of trustees' books May 29th, 1880, on file		17,980 10	
Amount of cash reserved and deposited for the payment of bonds and coupons not yet presented, as follows, viz:			
Coupons matured prior to July 1st, 1874, and interest thereon from maturity to April 24th, 1880	$4,503 05		
Coupons matured on and subsequent to July 1st, 1874, and interest thereon from maturity to April 24th, 1880	78,749 79		
132 bonds and coupons maturing subsequent to April 24th, 1880, viz, $201.72, to be paid and endorsed on each bond when presented	26,629 39		
		109,882 23	
			4,748,950 47

E. & O. E.—B. STEPHENSON, *Auditor.*

JNO. J. HOWELL, *Treasurer.*

NEW ORLEANS, *May 28th*, 1880.

'Referred to and submitted with report of special master, June 1, 1880.

BALANCE SHEET.—*Condensed for Five Years and Three Months, ending April 30th, 1880.—Filed May 31, 1880.*

Dr.			Cr.		
To amount of gross operating expenses		$1,772 335 42	By amount of gross earnings		$3,063,782 52
" " " " extraordinary expenses		1,130,874 13	" " " bid on sale of trust estate	$1,000,000 00	
" " " special expenses	$1,430,970 17		of which there was furnished by the trustees, from money in their hands derived from business of the road under decree of court	31,425 50	
" " " preferential charges of trust	185,333 33				3,068,574 50
		1,616,303 70	" " " cash received in operating the road from May 1 to May 13, 1880, inclusive, for account of purchasers, in excess of amount consumed in payment of accounts pertaining to the same period		16,054 90
" " " coupons paid that matured July 1st, 1874, and subsequently with interest to April 24, 1880	$2,221,531 48		" " " balances due on account of sales of coupon tickets	$4,928 85	
3868 first mortgage bonds with all coupons subsequent to April 24, 1880, at $301.72 each	780,252 96		" " balances due on account of mileage on freight cars	892 70	
		3,004,784 44	Detailed statements of these two accounts are appended.		
" " " deposit in United States Trust Company of New York to pay—					5,821 55
coupons matured prior to July 1st, 1874, with interest thereon to April 24, 1880	$4,503 65		" " " unpaid wages, sums not called for on labor rolls	$1,067 25	
coupons matured on and subsequent to July 1st, 1874, with interest thereon to April 24, 1880	78,749 79		" " " special deposits made for account of transportation not yet required	293 20	
132 bonds and coupons matured thereon subsequent to April 24, 1880, being $301.72 to be endorsed on each	26,629 39				1,360 45
		109,882 23			
" " " of material on hand at shops in Mobile	$22,511 82				
" " " of fuel on hand	7,437 52				
		29,949 34			
" " due from U. S. Post-Office Department for mail service in April, 1880		2,224 76			
" " " from agent at New Orleans	$27 40				
" " " " Mississippi City	17 15				
		44 55			
" " of cash on hand at New Orleans to be transferred with accounts		8,673 37			
" " due from bills rendered clearing house at Atlanta, account operation postal cars		324 98			
		$7,655,593 92			$7,655,593 92

E. & O. E.—B. STEPHENSON, *Auditor.*

JNO. J. HOWELL, *Treasurer.*

NOTE.—A voucher in favor of Rogers and Rexford was made May 11th, 1880, for final estimate on 3d division of work under their contract amounting to $4,132.55, which voucher becomes due and payable June 10th, 1880, and is transferred with the accounts of the trustees as a pending obligation to be assumed and paid when due by the purchasers.

Referred to and submitted with report of special master June 1, 1880.

29 *Detailed Statement of Balances due Connecting Roads on account of Passenger Business, as shown by Balance Sheet.—Filed May 31, 1880.*

Baltimore and Ohio	$16 76
Burlington, Cedar Rapids and Northern	7 21
Central Railroad of Georgia	79 84
Central Pacific	49 08
Cincinnati Southern	206 76
Chicago and Alton	551 24
Chicago, Burlington and Quincy	26 82
Chicago, Columbus and Indiana Central	39 42
Evansville, Terre Haute and Chicago	1 16
Grand Trunk Railroad of Canada	517 44
Great Western Railroad of Canada	9 16
Kansas City, St. Joseph and Council Bluffs	45 96
Kansas Pacific	40 00
Louisville, Cincinnati and Lexington	445 66
Lake Shore and Michigan Southern	60 36
Memphis and Charleston	1 80
Michigan Central	11 34
Montgomery and Eufaula	16 68
New York Central and Hudson River	23 72
New York and Charleston Steamship Co	39 96
New York, Lake Erie and Western	4 86
North Eastern of South Carolina	27 65
Ohio and Mississippi	4 76
Pittsburgh, Cincinnati and St. Louis	254 99
Pennsylvania	433 74
Providence Line	12 00
Red River Steamers	10 00
Redeemed Coupons	33 54
St. Louis, Vandalia and Terre Haute	37 88
Selma, Rome and Dalton	41 99
Union Pacific	556 15
Washington City, Virginia Midland and Great Southern	844 25
Wabash, St. Louis and Pacific	83 35
Western and Atlantic	385 16
Wilmington, Columbia and Augusta	74
Wilmington and Weldon	7 42
	$4,928 85

Detailed Statement of Balances due Connecting Roads on account of Mileage of Freight Cars, as shown by Balance Sheet.

Atlantic, Mississippi and Ohio	$23 27
Alabama Central	2 12
Canada Southern	2 12
Circinnati Southern	12 70
East Tennessee, Virginia and Georgia	62 39
Jefferson, Madison and Indianapolis	17 99
Louisville and Nashville	504 26
Louisville, Cincinnati and Lexington	11 64
Mobile and Ohio	70 54
Mobile and Girard	2 12
Montgomery and Eufaula	7 41
Nashville, Chattanooga and St. Louis	24 02
Ohio and Mississippi	33 83
Pensacola	7 31
St. Louis and South Eastern	6 35
Carried forward	$788 07

Brought forward	$788 07
Selma, Rome and Dalton	90 45
Western and Atlantic	16 83
Western Railroad of Alabama	1 05
	$896 40
LESS:	
Balance due this Road by the Missouri Pacific	3 70
	$892 70

Statement of payments made and to be made to ROGERS & REXFORD, *under their Contract, for raising grade of Road, from 14th mile post eastward to Pearl River.—Filed May* 31, 1880.

FIRST DIVISION.

Work comprised 58,559 cubic yards of earth work, all of which is completed and paid for as per contract, at 30 cents per yard		$17,567 70

FOURTH DIVISION.

Work comprised 59,769 cubic yards of earth work. Work completed and paid for at contract price, 30 cents per yard	$17,930 70	
Also an allowance made by order of court on completion of 4th division	6,500 00	
		24,430 70
Paid on completed work		$41,998 40

THIRD DIVISION.

Work comprised 54,503 cubic yards of earth work, contract price 30 cents per yard	$16,350 90	
An order of court was made allowing an increase of 10 cents per yard	5,450 30	
Value of work	$21,801 20	
Estimates have been made and paid on account of 3d Division for work done to April 30, 1880, amounting to	17,668 65	
Leaving as final estimate, which was made May 11, 1880, and included in voucher which will be due and payable June 10th, 1880.		$4,132 55

SECOND DIVISION.

Work comprised 64,288 cubic yards of earth work, contract price 30 cents per cubic yard	$19,268 40	
An order of court was made allowing an increase of 10 cents per yard	6,422 80	
Value of work	$25,691 20	
Estimates have been made and paid on account of 2d Division, for work done to April 30, 1880, amounting to	4,794 00	
Leaving work to be done and paid for subsequent to April 30, 1880		20,897 20
Total value of work, payment for which is assumed, under decree of sale, by purchasers as per terms of contract		$25,029 75

E. & O. E.—NEW ORLEANS, *May 31st*, 1880.

JNO. J. HOWELL, *Treasurer*.

31 *Statement of Trustees for April*, 1880.—*Filed May 31st*, 1880.

NEW ORLEANS, *May 20th*, 1880.

.....

.....

DEAR SIR: The trustees and receivers for the owners of the bonds of the New Orleans, Mobile and Texas Railroad Company secured by the first mortgage upon the railroad and property belonging thereto in and between the cities of New Orleans and Mobile, report that the earnings and expenses of the road during the month of April, 1880, were as follows, viz:

Earnings.

Earnings from transportation of passengers	$20,384 86	
" " " freight	21,319 37	
" " " express freight	1,253 90	
" " " mails	2,224 87	
" " telegraph service	32 12	
" " rents	924 20	
" " miscellaneous sources	3,968 45	
Total earnings for one month		$50,107 77

Expenses for Operating the Road.

MAINTENANCE OF ROADWAY.

Materials and tools for repairs of tracks and crossings	$414 27	
Foremen, sub-division men, and train service	5,035 05	
Materials for repairs of bridges and waterways	759 85	
Labor for repairs of bridges and waterways	107 70	
Drawbridge tenders and watchmen	384 95	
Oil and waste for drawbridges	12 24	
Construction and repairs of hand-cars	80 02	
Oil and waste for sub-division men	9 45	
Wood for stations and sub-divisions	20 41	
		$6,823 94

PASSENGER EXPENSE.

Agents, ticket sellers, and rents	$1,242 40	
Sundry office expenses	49 85	
Conductors, baggagemen, and brakemen	996 00	
Enginemen and firemen of passenger trains	768 00	
Repairs of passenger and baggage cars	3,291 29	
Oil and waste for passenger and baggage cars	193 18	
Cleaning and inspecting passenger and baggage cars	185 00	
Wood for locomotives of passenger trains	1,158 70	
Printing and stationery	15 50	
Mobile line expense (through passenger business)	425 00	
Advertising	210 92	
Contingent expenses	27 41	
Light and fuel	3 50	
New stock of passenger tickets	8 40	
		8,605 15

FREIGHT EXPENSE.

Agents and clerks	$2,123 50	
Sundry office expenses	22 50	
Stationery and printing	10 25	
Fuel and light for offices	48 10	
Labor handling merchandise	919 20	
Conductors and brakemen	881 85	
Enginemen and firemen of freight trains.	1,091 25	
Repairs of freight cars	723 01	
Oil and waste for freight cars	327 51	
Oiling and inspecting freight cars	139 50	
Wood for locomotives of freight trains	782 50	
Contingent expenses	2 00	
		7,071 17

DAMAGES AND OVERCHARGES.

Overcharges	$390 26	
Loss and damage of merchandise	187 50	
Animals killed or injured	757 25	
		1,335 01

32 GENERAL EXPENSE.

Superintendent's and general office salaries	$996 66	
Salaries of master mechanics and clerks in shops (Mobile and New Orleans)	510 00	
Sundry office expenses	76 00	
Telegraph operators and expense	471 92	
Stationery and printing	41 35	
Yardmasters, switchmen, flagmen, and watchmen	773 85	
Labor at wood and water stations	175 00	
Wood for wood and water stations	20 52	
Repairs of locomotives	2,707 38	
Oil and waste for locomotives	248 86	
Cleaning and inspecting locomotives	793 00	
Supplies for stations	32 25	
Oil and waste for stations	39 33	
Oil and waste for watchmen	6 60	
Oil and waste for machinery in New Orleans shops	5 16	
Oil and waste for machinery in Mobile shops	29 66	
United States postage	31 00	
Legal expenses	513 90	
Contingent expenses	283 76	
Repairs of buildings and platforms	354 52	
" shops, yard-buildings, yards, and fences	134 82	
Repairs of tools and fixtures in shops	425 18	
" wood and water stations	250 98	
United States mail expense	493 11	
New buildings	63 72	
Taxes	5,728 10	
		15,206 63
Total expenses for operating the road one month		39,041 90
Amount of earnings over operating expenses during one month		$11,065 87

Expenses for Extraordinary Repairs.

Repairs of roadway:			
Cross-ties	$293 14		
Foremen, subdivision men, and train service men	475 00		
Enginemen and firemen of road service trains	150 00		
Repairs of road service trains	14 95		
Oil and waste for road service trains	19 21		
Wood for locomotives of road service trains	51 98		
		$1,004 28	
Raising grade and ballasting track		1,464 73	
Superintendence and general expenses		1,083 32	
Legal expenses (in excess of amount charged to operating expenses)		975 91	
Total expenses for extraordinary repairs during one month			4,528 24
Amount of earnings over operating and extraordinary expenses during one month			$6,537 63

Special Expenses.

Amount paid for steel rails (freight on 200 tons 83 lbs)		$1,290 44	
Amount paid for right of way in Mobile		100 00	
Amount paid for interest on certificates of indebtedness		7,000 00	
Raising grade and ballasting track west of Pearl River (contract)	$7,229 60		
LESS:			
Rent of locomotives and cars employed on the work	1,024 64		
		6,204 96	
Total of special expenses during one month			14,595 40

E. & O. E.—B. STEPHENSON, *Auditor.*

JNO. J. HOWELL, *Treasurer.*

33 *Report of Special Master on petition of Trustees of May* 29, 1880.—*Filed June* 1, 1880.

In the Circuit Court of the United States for the District of Louisiana.

E. D. MORGAN and J. A. RAYNOR, trustees,
vs.
THE NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. et als. } No. 7357.

To the Honorable the Judge of the said Court:

The undersigned, special master in said cause, who was directed by the order of May 29th, 1880, to examine the reports of accounts and vouchers of the complainants, respectfully reports:

That pursuant to said order he has made the examination required

The complainants have submitted their statement of the amount of money received by them from the sale of the said railroad, and of the amounts disbursed for preferential charges, matured coupons and interest thereon, and the amount applicable to the principal of the bonds.

34 The said statement has been examined and is reported to be correct. It appears that the trustees have disbursed the money in accordance with the deed of trust and the decree of the court.

The said railroad and all of its property was duly delivered by them to the purchasers, as appears by the "assignment of bid" and the receipts of D. W. C. Rowland and W. S. Williams on file.

By reference to the statement of the trustees of receipts and disbursements, it appears that there is a balance remaining in their hands for the payment of matured coupons and interest thereon, &c., to bondholders who did not join in the purchasing agreement and who have not presented their bonds to the trustees and generally were not proved in court, the sum of $109,882.23, which amount I recommend shall be deposited in the United States Trust Company of New York, and there held for that purpose. The said account, marked "A," is submitted herewith.

35 I further report that the vouchers and accounts of the trustees for operating the said railroad up to the 13th day of May, 1880, (when they delivered the said property to the purchasers,) as well as the balance sheet condensed for five years and three months, stating their entire acts and doings, were severally examined. They appear to be accurate and correct, and the disbursements made were necessary and proper in the management and conduct of the said railroad. I therefore recommend that the said accounts be allowed and the acts and doings of said trustees in the premises be confirmed.

The said accounts show a balance in their hands amounting to $8,673.37 arising from the operations of said railroad, which should

be transferred with other unsettled accounts and matters to the purchasers of the property.

I therefore recommend that the said sum of money be deposited in the registry of the court, subject to the order of the purchaser of the said property, the New Orleans, Mobile and Texas Rail-
36 road Company, as reorganized.

I further recommend that said trustees should retain their books, accounts, and vouchers of their administration, subject to any future order of the court.

The condensed statement of earnings and expenses for five years and three months; the statement of special expenses during five years and three months; the synopsis of earnings, expenses, etc., for five years and three months; the balance sheet condensed for five years and three months, and the detailed statement of balances due connecting roads, &c., on file in the cause, are referred to as a part hereof.

The trustees having delivered to the purchasers thereof the entire property sold under the decree of this court and rendered their accounts in all respects of their administration up to the 13th day of May, 1880, I therefore recommend that they be discharged in the premises, and upon rendering their final account of the assets
37 remaining in their hands, as shown by their statement, that they be fully discharged.

The condensed statement of earnings and expenses for five years and three months; the statement of special expenses during five years and three months; the synopsis of earnings, expenses, &c., for five years and three months; the balance sheet condensed for five years and three months, and the detailed statement of balance due connecting roads, &c., on file in the cause; the deposition of John J. Howell; the "assignment of bid;" the receipt of D. W. C. Rowland and W. S. Williams for the said property, are submitted herewith.

Respectfully submitted.

(Signed) F. A. WOOLFLEY,
Special Master.

June 1, 1880.

38 *Deposition of John J. Howell.—Filed with Special Master's Report, June 1, 1880.*

In the Circuit Court of the United States for the District of Louisiana.

E. D. MORGAN and J. A. RAYNOR, trustees,
vs.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. et als. } No. 7357.

Personally appeared before me, John J. Howell, who, being sworn, deposes and says: That he has been the treasurer of E. D. Morgan and J. A. Raynor, trustees, &c., in the above-entitled cause, from the time they entered upon their duties herein up to the closing of their

accounts as rendered to the court; that the condensed statement of "earnings and expenses" for five years and three months, the "statement of special expenses" for the same period, the "synopsis of earnings, expenses, &c.," for the same period, and the "balance sheet" for the same, filed in the court on May 31, 1880, are just and correct, and show a faithful account of all their transactions
39 in the administration of their trust herein up to the 13th day of May, 1880.

(Signed) JOHN J. HOWELL.

Subscribed and sworn before me June 1st, 1880.

(Signed) F. A. WOOLFLEY,
Special Master.

40 *Receipt of D. W. C. Rowland.—Filed May 15th*, 1880.

Referred to and submitted with master's report, June 1, 1880.

The New Orleans, Mobile & Texas Railroad Company, as reorganized, purchasers, and the Louisville and Nashville Railroad Company, as lessees, acknowledge to have received from Edwin D. Morgan and James A. Raynor, trustees, lately in possession of the railroad of the New Orleans, Mobile & Texas Railroad Company under the orders and decrees of the Circuit Court of the United States at New Orleans, all of the real and personal property of the said railroad company sold by the trustees on the 24th day of April, 1880, and which property was transferred to the said New Orleans, Mobile & Texas Railroad Company, as reorganized, purchasers, and the Louisville and Nashville Railroad Company, as lessees, by the bidders at the said sale, together with the railroad and the rights, franchises, and privileges included in the sale.

The property received is contained in an inventory filed in the court at New Orleans in the suit against the New Orleans, Mobile & Texas Railroad Company and others, of which this inventory is a copy. There is a delivery of four locomotives, Nos. three, seven, and eight and sixteen, now upon the railroad of the company and held under the deed of trust. This delivery is understood to be conditional, and the trustees, Morgan and Raynor, are to retain
41 their right of property and of possession therein for the purpose of fulfilling their bonds to E. B. Lott, tax collector, in Mobile, who caused these locomotives to be seized, and they were withdrawn from the operation of his seizure by the commencement of suits for detinue against him in the Circuit Court of the United States for the southern district of Alabama, at Mobile, on the part of the plaintiffs Morgan and Raynor, trustees. These suits are now pending, and the New Orleans, Mobile & Texas Railroad Company, as reorganized, purchasers, and the Louisville & Nashville Railroad Company, as lessees, agree to defend them and to pay the judgment in case of failure by the plaintiffs.

They agree to substitute other bonds for those of the trustees, and

to surrender them for cancellation in thirty days. This being done, the property and right of the said Morgan and Raynor will terminate, and the title of the others become complete and to pass to them as other property in this receipt.

Signed in triplicate this fourteenth day of May. A. D. 1880.

(Signed) D. W. C. ROWLAND,

For the New Orleans, Mobile and Texas Railroad Company, as reorganized, purchasers, and for the Louisville and Nashville Railroad Company, as lessees.

In presence of—

(Signed) GAYLARD B. CLARK.

Referred to and submitted with report of special master, June 1, 1880.

42 *Entry in the Chancery Order Book, June 1st, 1880.*

EDWIN D. MORGAN and JAMES A. RAYNOR, trustees,
v.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. et als.

The parties in interest are hereby notified that F. A. Woolfley, special master herein, has this day filed his report upon the petition and statement of the trustees of receipts and disbursements of moneys arising from the sale, &c., and of the examination of vouchers and accounts for operating the railroad; also recommending the discharge of the trustees, &c.

43 *Order discharging Trustees, &c.—Entered and filed June 1, 1880.*

In the Circuit Court of the United States for the district of Louisiana.

EDWIN D. MORGAN and JAMES A. RAYNOR, trustees,
v.
NEW ORLEANS, MOBILE AND TEXAS RAILROAD CO. et al. } No. 7357.

This cause came on to be heard upon the report of the special master herein of the examination of the accounts and vouchers therefor of the trustees aforesaid, Morgan and Raynor, with a view to a final settlement until the 13th May, 1880, the date of the delivery of the possession of the deed of the property and the property itself to the purchasers; and it appearing from the report that the accounts are correct, and that there remains of the money received from the sale, in their hands, for the bondholders who did not join in the purchasing agreement, and who have not presented their bonds to the trustees, and generally were not proven to the court, the sum of $109,822.23 as the ratable share of these bondholders, the court upon consideration thereof orders the trustees to hold the same for disbursement under the deed of trust, and that they deposit the same in the United States Trust Company in New York, subject to their order

for that purpose, and that the said trustees be now discharged from their trust, except for the performance of this duty, and that they report to the court their action herein relative thereto.

It further appearing from the master's report that there remains in the hands of the said trustees the sum of eight thousand six hundred and seventy-three 37-100 dollars, arising from the property of the trust, after the payment of charges and expenses, this sum will be paid to the purchaser, the New Orleans, Mobile and Texas Railroad Company, as reorganized, or into the registry of the court for their use.

The court further orders that the trustees retain and preserve their books of accounts and vouchers, subject to any future order of the court.

(S'gd) EDWARD C. BILLINGS,
June 1, 1880. *Judge.*

44 *Petition of the New Orleans, Mobile & Texas Railroad Company, reorganized, to be paid money from the registry.—Filed June 19th, 1880.*

United States Circuit Court.

E. D. MORGAN and JAMES A. RAYNOR
vs.
THE NEW ORLEANS, MOBILE & TEXAS R. R. Co. } No. 7357.

The petition of the New Orleans, Mobile & Texas Railroad Company, reorganized, respectfully shows: That as appears by the decree rendered in this case on the 1st day of June, 1880, there is in the registry of the court eight thousand six hundred and seventy-three and 37-100 dollars to be paid over to the N. O., M. & Texas Railroad Company, reorganized.

That in order to obtain said sum an application to your honor is necessary.

Wherefore petitioner prays that an order may be made directing the clerk of the court to pay said sum to petitioners.

(Signed) BAYNE & RENSHAW,
Solicitors for Petitioner.

Order on the foregoing petition.—Entered and filed June 24th, 1880.

This cause came on to be heard upon the petition of the New Orleans, Mobile & Texas Railroad Company, reorganized, praying to be paid the sum of eight thousand six hundred and seventy-three *three* 37-100 dollars from the registry of the court, deposited by the complainants herein to the order of said petitioners.

On consideration whereof, it is ordered that the clerk be
45 and he is hereby authorized to pay over to the petitioners herein the said sum of eight thousand six hundred and seventy-three 37-100 dollars ($8,673.37), as prayed for June 23d, 1880.

(Signed) W. B. WOODS, *Judge.*

46 UNITED STATES OF AMERICA, }
Circuit Court of the United States. }

Fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing forty-five pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had from the 21st day of May, 1880, to the 24th day of June, 1880, inclusive, in the case of E. D. Morgan and J. A. Raynor, trustees, *vs.* New Orleans, Mobile & Texas Railroad Company et als., No. 7357 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 22d day of November, A. D. 1882.

Nine (9) words erased before signing; two (2) words interlined before signature.

Approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22d day of November, A. D. 1882.

Two (2) words interlined before signing.

Approved.

EDWARD C. BILLINGS, *Judge.*

(Endorsement on cover:) Supreme Court of the United States, 1882, October term; No. 90; William S. Williams & David Thomson, partners as Williams & Thomson, &c., appellants, *vs.* Edwin D. Morgan and James A. Raynor, individually and as trustees and receivers, &c.; (exhibit); record on motion to dismiss; filed 11th December, 1882.

Supreme Court of the United States.

WILLIAM S. WILLIAMS AND DAVID THOMSON, APPELLANTS,

versus

EDWIN D. MORGAN AND JAMES A. RAYNOR ET AL., APPELLEES.

No. 337.

MOTION TO DISMISS THE APPEAL FOR CAUSES ASSIGNED IN THIS BRIEF TO BE SUBMITTED THE DAY OF JANUARY, 1883, TO THE SUPREME COURT AFORESAID.

JOHN A. CAMPBELL,
Attorney for Appellees.

J. S. RIVERS, Stationer and Printer, 71 Camp St., N. O.

Supreme Court of the United States.

OCTOBER TERM 1882.

No. 337.

WILLIAM S. WILLIAMS AND DAVID THOMSON, APPELLANTS,

versus

EDWIN D. MORGAN AND JAMES A. RAYNOR ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES IN NEW ORLEANS, LA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court aforesaid:

The appellees in the suit in this Court of the title aforesaid, submit their joint and their several motion to the Court to dismiss the appeal taken to this Court in the Circuit Court of the United States at New Orleans in the District of Louisiana.

1. For that, the appeal was improvidently granted by the Circuit Court from orders of that Court which under the conditions of the cause, were not a proper

subject to support, an appeal being special orders, and not final decrees.

2. That the orders specified in the appeal were interlocutory orders, preparatory for, and introductory to the final hearing and final orders in the cause, and which final orders and decree were rendered subsequently in the said cause by the Circuit Court at the same term of that Court.

3. That the said appellants have not shown any sufficient right to oppose and question the orders specified, nor to take any appeal in the record and are incompetent to appeal.

4. That the said appellants have not brought to the Court an appeal within the appellate jurisdiction of this Court and under the Revised Statutes of the United States and the order and practice of the Court.

I.

A STATEMENT OF THE RECORD OF THE CAUSE FILED BY THE APPELLANTS, AND OF THIS CONTROVERSY.

This appeal was allowed in the Circuit Court aforesaid, the 21st May, 1880, to the two parties, Williams and Thomson jointly, and by Williams separately on a petition to the Court. The petition designates two orders made by the Court, one on the 7th day of May, and the other the 17th of May, 1880, and apply to parts of the orders specified in the petition and the proceedings leading to the appeal.

The record filed in this Court is unusually volum-

inous and some account of it will be now given to this Court so as to explain this motion.

Edwin D. Morgan and James A. Raynor, of New York, in March, 1875, filed in the Circuit Court a bill to enforce a mortgage deed of trust wherein they were the trustees. The mortgage was made to secure an issue of four thousand bonds of $1000 each, with coupons of interest for the payment semi-annually of an annual interest of 8 per cent. The New Orleans, Mobile & Texas Railroad Company was the mortgagor and a defendant. There had been a foreclosure of a junior mortgage in 1873, and a reorganization of a corporation with the same name. This corporation No. 2 is a defendant, and had possession when the default on the first mortgage occurred. The trustees of the second mortgage, Gardner & Butler, are defendants. This second corporation, after its organization, issued bonds and made a deed of trust to William S. Williams and Oliver Ames, trustees, in 1873.

These trustees are defendants. Their mortgage is junior to the first and is subordinated to it by its terms Morgan & Raynor were appointed Receivers in March, 1875, and under the deed of trust and the Court's orders, made repairs, replacements and ameliorations. On the 5th March, 1880, the Circuit Court rendered a decree of sale in which the first mortgage was fully established; the mortgage debt declared and defined, and the power was given to the trustees to make a sale under the superintendence of a master and to distribute the moneys according to the deed

and decree. The debt due on the second mortgage was ascertained and the title of the two trustees, Williams & Ames, to any SURPLUS was declared. The sale was made 24th of April, 1880, under the decree. The Purchasing Committee, George Bliss, L. Von Hoffman and Oliver Ames, were the purchasers, for the sum of four millions of dollars ($4,000,000). This sale was reported with the draft of the deeds the 5th of May, and was confirmed the 7th of May, 1880.

The report shows that "no cash money was paid at the sale," although the decree provided that there should be paid a sum sufficient to pay all the preferential charges, and which had been fixed at $900,000.

The decree of the fifth of March, 1880—the order of confirmation of the 7th of May are printed, and submitted with this motion marked A and B. No opposition was made. The decree of March allowed the purchasing committee in case of their purchase a term for making full payment, extending to twenty days. The trustees made the settlement with the purchasing committee in the City of New York, the 13th of May, 1880. By the decree the trustees disbursed this money, and the money on hand from the business. On the 29th of May, 1880, the trustees made the report to the Court that they had made a settlement with the purchasing committee, Bliss Von Hoffman & Ames, and obtained the price. They reported that after this the purchasers aforesaid assigned the bid to the New Orleans, Mobile and Texas Railroad Company reorganized; that they had executed deeds to that new

corporation, and delivered the property to their agents; that there was a balance on hand collected from the railroad which they proposed to pay into the registry, and a sum due bondholders to be deposited in a Trust company. This report asked that their accounts be examined, and that they be discharged from the trust, all their work being finished. This report was confirmed. There was a reference to the master, who reported that the administration had been accomplished; all the vouchers were satisfactory; and that the balance on hand was ascertained, and should be deposited as proposed.

On the first of June the Court confirmed this report, and granted an order for their discharge. The printed paper contains copies of these documents as testimony of the facts herein stated.

In the five years and upwards of administration there is no exception to any account, order, decree, decretal, order, direction of the Court to be found to the administration. The only controversy respects the two orders from which this appeal has been taken, and in respect to which this motion has been made. No opposition, exception nor claim for rehearing has been submitted in the Circuit Court to any one of the orders, nor to the final decree approving of the accounts of the trustee, and granting their discharge from the Court and the cause. The vouchers, in respect to the subject of money specified in those orders, were filed with all other of the vouchers for receipt and disbursement on the final settlement, and are sanctioned by the orders of the Court now submitted.

A statement of the controversy made in the Circuit Court by the appellants:

William S. Williams and David Thomson, and William S. Williams individually.

I.

None of the decrees, orders, directions of the Court prior in date to the order of the 7th of May, 1880, directing a reformation of a report of the master, relative to allowances to the trustees respectively for costs and compensation, and the allowance to the solicitors for professional service, are involved in this controversy.

The *reformed* report was filed the 8th of May by the master, and to this reformed report Williams & Thomson filed on that day exceptions. These exceptions were dismissed the 17th of May, 1880, and an appeal was allowed 21st of May, 1880, in open court, upon their petition dated —— day of May.

This order of the Court of 8th of May is copied from the record, and is as follows:

EDWIN D. MORGAN, JAMES A. RAYNOR, TRUSTEES AND RECEIVERS

versus

THE NEW ORLEANS MOBILE AND TEXAS RAILROAD COMPANY, ET ALS.

No. 7357.

ORDER OF THE COURT.

This cause came on to be heard upon the report of

the master in this suit upon the compensation to be allowed to the trustees for service in the execution of the terms of the deed of trust, and to their counsel for care and diligence in the employment of the trustees, and to the master in the cause, and upon the exceptions made to the report, and the report and exceptions were argued by counsel in the presence of the Court.

And the Court, upon consideration of the cause, confirms the report in the allowances made therein or proposed by the parties thereto in favor of John E. Parsons and F. A. Woolfley, as reported. And the Court orders the master to reform his report by an allowance to the trustee, Edwin D. Morgan, of a salary of ten thousand dollars per annum, from the date specified in the report instead of the annual allowance reported.

The Court further orders that the master reform his report by substituting the sum of fifteen thousand dollars per annum instead of the sums stated in the report according to the dates therein for James A. Raynor, trustee.

The Court orders the master to substitute for the allowance to John A. Campbell, for his professional services as counsel and solicitor, a salary of six thousand dollars per annum, from the commencement of the trust until the conclusion of the same. And that all of these sums be paid without reference to any other allowances. All of the above allowances to be made from the commencement to the end of the trust.

And the report is recommitted that these alterations may be made.

(Signed) EDWARD C. BILLINGS,
Judge.

The following is a copy of the reformed report, filed May 8th, 1880, and makes the subject of THE ORDER OF THE 17TH MAY, 1880, in the Circuit Court of the United States for the District of Louisiana:

[No. 7357.]

E. D. Morgan and J. A. Raynor, Trustee,

vs.

New Orleans, Mobile and Texas Railroad Co et al.

To the Honorable the Judges of the said Court:

The undersigned, special master in the above entitled cause, to whom was recommitted his report as to charges, allowances, etc., filed on the 3d of May, 1880, by an order entered on the 7th day of May, 1880, with directions to reform the said report, respectfully reports: That, pursuant to said directions, he has reformed the said report, the preferential charges, allowances, and costs, to be paid in the cause, are as follows:

1. Amount of certificates of indebtedness..... $700,000 00
2. Allowance to J. E. Parsons, counsel fees, from February 1st, 1875, to May 8th, 1880, five years, three months and eight days..... 15,000 00

3. Of allowance to J. A. Raynor, trustee, from date of entry on the property, February 1st, 1875, to May 8th, 1880, five years, three months and eight days, at $15,000 per annum	79,083	28
4. Amount of allowance to E. D. Morgan, trustee, same time as J. A. Raynor, $10,000	52,722	15
5. Allowance to J. A. Campbell, counsel fees, from February 1st, 1875, to May 8th, 1880, five years, three months and eight days, $6000 per annum	31,633	28
6. Due for publishing notices of sale in New York, Mobile and New Orleans	1,485	70
7. Solicitor's docket fee	20	00
8. Due Marshal of the Court	26	00
9. Clerk	47	90
10. For certificate of mortgages	20	00
11. To the master, expenses to New York to deposit bonds	117	25
12. For his services, fixed by the Court	5,000	00
Total	$885,155	56

The papers, testimony and proceedings heretofore submitted to and reported by me are submitted herewith.

(*Signed by the Master*) F. A. WOOLFLEY.

May 8th, 1880.

This report having been filed, Williams & Thom-

son appeared and excepted to it as parties named in the purchasing agreement, and claiming an interest. Williams as a bondholder under the first mortgage and as a trustee of the mortgage made in 1873, by the New Orleans, Mobile and Texas Railroad Company, No. 2, also excepted. The exceptions were submitted to the Court on the 17th of May, and were dismissed. The order was as follows :

UNITED STATES CIRCUIT COURT, DISTRICT OF LOUISIANA.

Edwin D. Morgan and James A. Raynor, Trustees, *versus* New Orleans, Mobile & Texas Railroad Company.	No. 7357.

This cause came on to be heard upon the exceptions to the reformed report of the special master, herein filed by Williams & Thomson and William S. Williams, bondholder and as trustee for and under the second mortgage, on the 8th of May, 1880.

Whereupon, and upon consideration thereof, it is ordered that said exceptions be dismissed, May 17th, 1880.

The order of appeal is made upon a petition of these persons, Williams & Thomson and Williams, as trustee and bondholder. The exceptions and petition of appeal designate the three items in the reformed report, Nos. three (3), four (4) and five (5), as the subjects of complaint. It mentions Morgan and Raynor,

trustees, and Campbell, solicitor, as the persons complained of, and none other persons are cited as appellees.

The order of the 7th of May, is attacked and the report as originally made on the 3d, and afterwards reformed on the 7th, is affirmed as the proper report to be confirmed and its items reasonable and just; the report of the third without the alterations by the Court, is the matter now demanded These reports are in the record. The record filed in this Court of the cause, No. 7357, terminates with the dismissal of the exceptions and the allowance of the appeal of the 21st. The appellees to substantiate their objections have obtained a certified copy of the proceedings at the same term in the same Court, to establish and to verify their allegations in this motion, and have accompanied with this statement the decrees and orders referred to with particularity, and deemed of any importance to the decision of the motion.

The assignment of the causes for the motion to dismiss this appeal, and which support that motion.

II.

The two orders specified in the petition of appeal and the decisions of the Circuit Court are obviously incidental and interlocutory orders, having for their object to complete the execution of the important decree rendered in that Court, the 5th of March, 1880, directing the sale of the railroad between New Orleans and Mobile and closing the administration under the deed

of trust, and the orders of the Court by the trustees and receivers.

That decree of March, 1880, is full, and determines the relations of all the parties in the suit to the trustees, and the trust property held under the deed of trust, and subject to the control and authority of the Circuit Court. The fifth section of the decree states the debts.

1. The mortgage debt amounted to principal..... $4,000,000
2. Interest coupons not paid 1,903,040
3. Interest on coupons, at 7 per cent. allowed..... 4047744 32
4. Certificates issued for repairs and ameliorations..... 700,000

The interest on the coupons was not computed then, but amounted to ———, thus making a mortgage debt for ———, as defined in the decree.

Besides the deed of trust provided in terms for the payment of expenses, charges, costs, liens, assessments and compensation to the trustees and counsel, the decree provides for the ascertainment of these items of charge and of expense.

2. The decree directed a sale of the property to be made after advertisements, that a sum to cover all preferential charges should be paid, at the sale, in cash, and allowed a purchasing committee twenty days after the sale for a full compliance, if such a committee were formed, and became the purchasers. *Decree*, 7th section.

Masters report - printed Record 16

3. The decree required the trustees to keep possession till payment in full, and provided for the execution of deeds, and for an indemnity to the trustees before a surrender of the property to the purchasers, and an assumption by the purchaser of all their responsibilities. 7th section.

4. The decree directs the trustees to disburse, under the supervision of the master, all of the moneys received from the sale among the bondholders and other parties, conformably to the deed of trust, and shall make reports to the Court. 9th section.

5. The decree makes provision for the settlement of the accounts of the trustees, and for their discharge. 11th section.

It will be seen that the trustees complied with regularity to the orders of the Court as contained in the decree, reporting promptly after any successive stage was reached. By arrangement in the decree the money bid was not paid till the expiration of twenty days; the disbursements, delivery of deeds to the purchasers and of the property, the reception of bonds of indemnity were completed, so as to submit the accounts finally, and to obtain the final order in June, 1880.

II.

We submit the orders we have copied as specified in the petition of appeal do not fulfill the conditions of a final decree in this cause, such as to authorize these two persons to appeal from those orders in the

manner specified. The order of the 7th recommits the report of the master for modification. The master then modifies and alters the report and files a new report in his office. Thereupon the same parties file exceptions to the report as it had been modified. The Court dismisses the exceptions; probably for the reason that it was not the time and manner to obtain a review of the conclusions announced in the former order of the 7th. Thus the master's report remained on file as modified for further directions, and as open to such measures for review as are usual in such cases, and to contest upon the final hearing.

What is the final decree in this cause? What was the aim to be accomplished by the decree made the 5th March, 1880?

This is stated in the 8th, 9th, 10th, 11th sections of that decree.

The aim will be fully attained when the entire trust estate that the Court's orders to be sold is transferred to a purchaser according to the decrees and the consequential orders, and the money is all distributed among the persons claiming under the deed of trust, and the accounts are examined and passed on. These various orders and acts are not open for an appeal till the cause is brought to its conclusion, and that the whole case may come up and a full decree be made.

Exparte Jourdan, 4 Otto, 248;
Perkins vs. Fournequet, 6 H. 206;
Crosby vs. Buchanan, 23 Wall. 42;
Wheeler vs. Harris, 13 Wall. 51;

Humiston vs. Stanthorp, 2 Wall. 106;
Ogilvie vs. Knock Co., 2 Black, 101;
Delap vs. Hunter, Sneed, 101;
Craighead vs. Wilson, 18 H. 199, 202;
Montgomery vs. Anderson, 21 H. 386;
67 N. Y. Rep. 372.

III.

The persons interested in the appropriation of any portion of the trust estate, and who were in Court, are not parties to this appeal, and no account of them has been given by the appellants in petition or statement. The property in the hands of the trustees, and which is the subject of the orders of the Court of the 7th May and 17th May, belonged to a defendant corporation until it was applied to the liquidation of the debts of the corporation. The creditors of the corporation, who are parties each have an interest in this application. None of these parties are before the Court.

There has been no summons, nor severence, nor citations. The constituents of the trustees, as shown by deed and decree—their cestui que trusts are all absent. Nor are the debtor corporations before the Court on the appeal.

The title of William S. Williams, as trustee, to prosecute opposition and appeal.

I.

William S. Williams and Oliver Ames, as *trustees* of a second mortgage, were made parties to the bill.

They answered and their mortgage is established in the decree of the 5th of March, 1880. The 13th section of the decree of March, directs the sale of all of the trust property. "*And in the event, that the sums due upon the deed of trust being fully paid with all the expenditures and costs* thereunder, and there be then a SURPLUS, that this SURPLUS be paid to Oliver Ames and William S. Williams, parties to this suit, according to the prayer of the petition on file by them."

The decree found that there was due about *seven* millions of dollars ($7,000,000), for principal, overdue coupons, interests on coupons matured, certificates of indebtedness, without including the compensation to the appellees or either of them. The proceeds of sale were not sufficient to pay within two millions of the amount of the mortgage debt.

There was no sale when Williams commenced his opposition. Nor was there any proceeds of sale in the hands of the trustees, on the 7th of May, when the order was made, and no SURPLUS at any time after. The decree of the Court directed payment to the trustees, and not to Williams only.

The amount of all the charges of every character embodied in these orders or disposed of under them, do not amount to two hundred thousand dollars, whether questioned or disputed. The two millions of debt not paid, as due on the deed of trust, would absorb ten times the amount and then there would be NO SURPLUS. Even then, Ames must have been a co-petitioner with Williams for an order to pay them.

One trustee cannot act without the other. The decree of March, 1880, designates both of the trustees as persons with whom the trustees must deal. The affix of trustee to the name of Williams has no legal significance for there was no legal right exhibited as belonging to it.

II.

Pretensions of Williams & Thomson collectively and as partners and associates.

This firm is not a party to the bill. The name is not in the bill-answer testimony reports decrees at any stage of the cause prior to April, 1880. They are not bondholders, nor creditors under the deed of trust. They came into the proceedings with a purchasing agreement filed for inspection in March or April, 1880, and allowed to be filed under the seventh article of the decree in March, 1880. The deed of trust in the first article defining the duties of the trustees, prescribes with great precision the duty of the trustees in respect to the distribution of money after a sale, either under their powers or under a decree. All of the money must be paid to the holders of bonds ratably, unless the trustees have incurred responsibilities for repairs, ameliorations, assessments, charges. The trustees are permitted to pay these and to retain for compensation for service done by them and others.

The decree of March, 1880, in the seventh section, orders the trustees to make these appropriations conformably to the deed of trust. Williams & Thomson

propound no claim as a preferential creditor under the decree, nor as holders of bonds. They came in with eventual interests, contingent benefits under the purchasing agreement whereby to set aside decree and the deed. If the charges provided for in the deed of trust have no existence, or if they are the subject of dispute, none other person can make the dispute or receive the benefit, but the class next in priority according to the decree and the deed of trust. The sum of four million of dollars bid at the sale does not pay the certificates of indebtedness finally fixed in the decree of March, the principal of the bonds, the coupons overdue and interest thereon. The preferential charges contained in the reformed report cannot be controverted by any person who does not belong to the classes above named. The second mortgage, as we have shown, is cut off for that there was no *surplus* after the payment of the debt due on the deed of trust. This purchasing agreement will come under discussion, and we shall show what the position of Williams & Thomson is.

THE PURCHASING AGREEMENT.

I.

In December, 1879, this suit was prepared for a hearing on a motion for a decree of sale submitted to the Circuit Court by the plaintiffs. The proceedings were retarded by negotiations resulting in a purchasing agreement, dated 10th February, 1880, in the record. Bliss, Von Hoffman & Ames had been ap-

pointed a committee in agreements among bondholders to dispose of all bonds subscribed, and that the bonds should be deposited in the Central Trust Company, subject to their order and disposition. This authority is confirmed, and by the last agreement the committee were empowered to act for the holders in all matters connected with the arrangements provided for in that agreement, or which should be added to it. No bondholder who did not subscribe and deposit his bonds was a party, and the committee were charged with the control and might use all of the bonds and coupons deposited, with power and authority to do and perform all acts and things to carry the agreement to effect; all matters of detail being left to them. 1, 3, 9, articles.

The agreement to be executed was that the bondholders were content to receive the bonds of the Louisville and Nashville Railroad Company, dated 1st January, 1880, bearing interest at the rate of six per cent.,. payable semi-annually, for $1000 each, bond for bond, payable forty years after date, secured by a first mortgage deed upon the railroad and property included in the deed of trust of the New Orleans, Mobile and Texas Railroad Company, in a final settlement in the deed. The Louisville and Nashville Railroad Company does not subscribe to this agreement.

The scheme as disclosed in this document is that Williams & Thomson expected to obtain a contract from the holders of *a majority* of *the bonds* secured in the deed of trust of Morgan and Raynor, trustees, or

from a committee representing such holders, and which was to be the basis of an arrangement for the control of the railroad, New Orleans and Mobile railroad, by permanent lease and running arrangement, to form part of the L. and N. Railroad Company. This is the vague description of the inducement to the L. and N. to issue the bonds of that corporation for $5,000,000, and to put them at the disposition of Williams & Thomson to carry out the arrangements of the agreement.

Williams & Thomson did not obtain the contract with the holders of a majority of the bonds, nor the contract with a committee to control the bonds.

They found Bliss Von Hoffman & Ames in possession of agreements, and on those was engrafted some of their aims.

The contract with the purchasing committee was that these persons, being satisfied of the title of the Railroad Company, should have the power to obtain a title after a sale, and a purchase by the committee, by the use of the issue of bonds of the Louisville and Nashville Railroad Company, in the manner specified in the agreement. The committee would buy.

The benefactions to Williams & Thomson, as contained in their bargain with the Louisville and Nashville Railroad Company, are to be found in the statement that all of the money or bonds to arise out of the issue of $5,000,000 was to belong to them as "their absolute property not employed."

Thus the four millions of bonds were to be ex-

changed bond for bond with the holders of bonds signing the agreement, but those who did not sign were to be paid a pro rata of the sum bid.

There were $1,000 000 of the bonds to pay the certificates of indebtedness and other charges. If these could be reduced by controversy, the benefit would enure incidentally to the brokers. They furnished money to the purchasing committee to pay the amount to be paid on the bid where money was to be paid.

The obvious interest was to have only a sufficient number of signatures, a majority, to crush out competition at the sale, and to have the price as small as possible, so that the cash dividend would be small. There were holders of 132 bonds, who did not subscribe, and these persons paid money due to them, keeping L. and N. bonds, as shown by the record submitted to the Court.

The manifest and obvious conclusion that persons thus situated, in respect to the cause, have no interest which allows them to appear in the cause to enhance their speculation. Their advantage and interest was to so manage affairs as to secure the railroad property by the smallest expenditure of the Louisville & Nashville Railroad bonds placed in their possession. To depress the bonds, to depress the price at the sale, to cut off the number of signators to the purchasing agreement, would redound to their benefit, and so to litigate with the trustees

The decree was framed under the deed of trust and the trustees in that deed, and by the terms of the de-

cree, reserved all the powers to prevent the attainment of such a purpose. The trustees could not deviate from the directions of the deed, and could not come in any relations to them in their fiduciary character. The decree deals only with the purchasing committee. The orders deal only with the purchasing committee, never with Williams & Thomson.

Wm. S. Williams, trustee of the second mortgage, thus bargains in the purchasing agreement.

In the fourth article: "It is understood that the sale of railroad, franchises, equipments and property shall be for the first mortgage bonds and coupons, and the second mortgage bonds and the stock shall be cut off. No allowance is to be made for them by the purchasers" (Williams & Thomson). Under the fourteenth article of the decree of March, 1880, there was a sale under the second mortgage at the same date as the other, Williams & Thomson are purchasers of the interest and estate for one hundred dollars.

WILLIAMS AS A BONDHOLDER.

A petition of Williams avers that he subscribed to the purchasing agreement of the 10th of February, 1880, 582 bonds, and that he would furnish evidence of the fact by production of an agreement with his name on it.

He made no proof of bonds before the master when the master took the proof of debt due on the mortgage. Nor are bonds produced as proved in any part of the record, nor shown. He does not allege any fact except a subscription on some paper to be produced.

The purchasing agreement shows, as we have seen, that all the bonds were put at the disposition and control of the purchasing committee to be used by them in the carrying into effect the agreements made and the responsibilities the committee were to share. On the 24th of April, the sale took place. Bliss, Von Hoffman and Ames were purchasers at this sale for the sum of $4,000,000. The decree of March required a sum to pay all charges antecedent to the bonds, all preferential charges to be paid in cash at the sale. The sum fixed under the decree was $900,000.

This payment was postponed till the 13th May. On the 7th May the reports show it had not been paid.

In the report of the 29th May it was reported as having been made the 13th May. On that date the report states that Bliss and Von Hoffman came with 3868 bonds, that on the bonds there were coupons, and there were detached coupons. With these the bid was paid. On every bond there was entered between the trustees and these holders and owners a credit for the dividend. The trustees empowered and ordered to disburse, and the purchasing committee charged to receive and to pay, made a settlement on that day of all of their relations of creditors and debtors of trustees and *cestue que* trusts to their mutual satisfaction. There was no protest, no complaint, nor ulterior reserved claim.

The trustees having received the price from the bidders at the sale, were empowered under the decrees and orders to make deeds to those purchasers or to

such person as they might designate. These purchasers made a written transfer to the New Orleans, Mobile & Texas Railroad Company, reorganized. There was an execution of deeds, delivery of possession to the grantee, and then all the accounts were rendered to the Court. Among the accounts submitted were the payment of all the preferential charges. These were examined, approved and no opposition filed to any one of them.

We acknowledge that Bliss, Von Hoffman and Ames, with 3868 bonds, might have controverted at any time any of the preferential charges as excessive or as illegal, and could have made an appeal under the forms and rules of the Court from the final decree and controverted in this Court their allowance to the whole extent of their interest in the sum allowed, as holder of those bonds. They were in a condition to litigate on the 7th of May, when the order was made. But they were not competent then to make an appeal from that order or the reformed report at that date. The final decree in the cause had not been made. The whole case was not ended. The Court might, at any time, direct a rehearing or direct a re-examination or might, without a rehearing or re-examination of the particular order in the final order, modify or revise it.

II.

The value of the subject matter of contestation with the respective appellees.

I.

The sum allowed under the order of the Court, dated the 7th May, 1880, and disclosed in the reformed report of the 8th of May, 1880, which has been copied into this brief, to Raynor, trustee, is $79,083 28; the exceptions claim that this is excessive above the sum of $12,838, which they allow to be fair and reasonable, as reported by the master. The matter contested is $66,245.

The sum allowed to E D. Morgan is $52,722 15 in the reformed report. The appellants claim that only $12,838 should have been allowed, and their exception applies to $39,888.

The sum allowed to the solicitor in the report as reformed is $31,633 28. The exception filed affects the sum of $11,633 28. The excess above the report of the master sustained by the appellants $11,633 28.

It has been shown that of these sums Williams & Thomson, as a firm, who commenced the opposition, had no right to any part. Their opposition of the 2d of April, and which was the only presentation of their right, shows no title under the deed of trust, nor under the decree of the 5th of March. In that opposition they arraigned the certificates of indebtedness in the same terms in which they assailed the other sums propounded for the trustees, two solicitors and the master.

Subsequently, William S. Williams joined in this opposition as the trustee of the second mortgage and before the day of the sale.

He claimed also as having subscribed 582 bonds on the purchasing agreement, and was admitted to connect himself with the opposition of Williams & Thomson.

Williams & Thomson have never exhibited any specification of the amount or sum that they claimed of either of these appellees, nor of the allowances made in the reformed report. We are not informed in their representations what portion they have a title to, and the evidence on which it stands.

We have searched the purchasing agreement and find that Raynor & Morgan, as trustees and as plaintiffs in the suit, had duties to perform other than those which would have suited Williams & Thomson, brokers, employes or purchasers.

The decree of March, 1880, was framed entirely upon the provisions of the deed of trust, and to carry into execution the terms of the deed, for the benefit of the *cestuis que trustent* and the decree does not recognize the purchasing committee as paramount, and does not admit any other than the committee to facilities beyond those allowed to all who should desire to purchase. The committee was never allowed to assign their bid until they had personally fulfilled, as the purchasers, the conditions of the sale. The bid was assigned to a corporation formed, and how composed, is not reported, and without interest in this suit. It is certain Williams & Thomson have no place on the record other than that we have contested from their first appearance as one to which there was no title,

and we have shown that in the disposition of the entire sum which came to the hands of the trustees, the trustees dealt exclusively with the purchasing committee, the owners, holders of 3868 bonds.

We shall not repeat what we have said of Wm. S. Williams, trustee of the second mortgage. He presented no demand for any *surplus* after the money came to the trustee's hands. The proof is perfect that he had no title to any of the sum awarded to Mr. Raynor, and which is contested in this appeal; were that amount distributed among the bondholders ratably, and according to the decree there would be payable on bond a sum of about sixteen dollars and fifty-four cents. The holders of 3868 bonds have made no opposition as we have seen, nor have the holders of the one hundred and thirty-two bonds who did not subscribe the purchasers' agreement. A clear, full proof of ownership and title to 582 bonds coming in after a final decree with an appeal would maintain a controversy for about $9600.

In the case of E. D. Morgan each bond would be entitled to about ten dollars.

The holder of five hundred and eighty-two bonds, duly proved, could maintain a contest for about $5820.

In the case of the solicitor the sum to be allotted to each bond is something less than three dollars. The holder of five hundred and eighty-two bonds would be a contestant for less than seventeen hundred and fifty dollars, and would be entitled to no more. No appeal would be allowable in such a claim. In this

instance, as this is a motion which applies only to the sufficiency of the appeal under the conditions presented, we forbear any allusion to the merits as developed in the reports and the orders presented in the petition for the appeal of the decision of the Court.

We submit with the motion the decree made the 5th of March, 1880, by the Circuit Judge ordering a sale.

2. The report of the sale and of the orders made thereon, on 7th of May.

3. The reports and orders relative to the payment of the price, the delivery of the property under the sale and the settlement of accounts.

4. The final order and decree of the Court.

5. We submit the master's reports on the allowances, and the orders made upon those exceptions and the petition for appeal.

6. The purchasing agreement as filed in the record.

The appellees find that the transcript filed in the cause terminates with the appeal, the 21st of May.

The appellees have caused a transcript to be made of the proceedings in the Court after that date and pray reference to it, and that it be put on file for all the purpose of this hearing.

JOHN A. CAMPBELL,
Of Counsel for Appellees.

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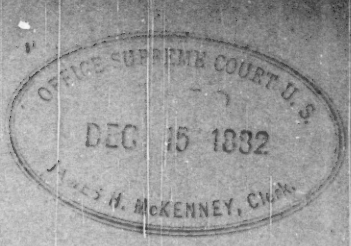

Supreme Court of the United States.

WM. S. WILLIAMS AND DAVID THOMPSON,
APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, *et al.*,
APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES: LOUISIANA.

THE APPEAL.—STATEMENT OF FACTS.

The appellants were allowed an appeal from *two orders* passed in the Circuit Court aforesaid in a suit which was commenced in January, 1875, by the appellees, as trustees of a deed of trust, executed by the New Orleans, Mobile and Texas Railroad Company, to secure an issue of four thousand bonds of $1,000 each, with interest at the rate of eight per cent. per annum, payable in July and January of each year, upon which there had been defaults that entitled them to entry upon the property as trustees, and, as well, to be appointed receivers. The defendants in the suit were the mortgagor, another corporation of the same name, that had been organized after a sale under a second mortgage, and

for distinction will be called No. 2. This corporation No. 2 had made a mortgage, of which Oliver Ames and Wm. S. Williams, one of the appellants, were trustees, to secure an issue of bonds for $2,000,000 of that company No. 2. Some bondholders of the mortgage of the appellees were also made parties upon their own application, and Williams and Ames were parties defendants. No interest was paid after the default in 1874 till the sale under the decree in April, 1880.

The railroad was found in a dilapidated, ruinous and insecure condition, and was reconstructed by the trustees during their possession. There were bridges to be built, and over a section of the railroad the road-bed had to be erected upon foundations made in a marsh and morass. All of the orders, decrees, reports and settlements of the trustees during their administration were passed without exception or opposition, with the exception of those described in the petition of appeal. No other holder of bonds, described in the deed of trust, or party has urged a complaint in Court, nor has been joined in this appeal of the appellant Williams. The sale of the property, the execution of the deeds of sale, the rendition of accounts by trustees and receivers, with vouchers to support them, the master's report of their sufficiency, the transfer of the property and their discharge, were carried through the Court without a dissenting exception.

The two orders mentioned in the petition of appeal and in the appeal allowed, involved but a single contest. This is: Did the Circuit Court commit any error in the allowances to the trustees for their own services and for the service of one of their solicitors? The orders appealed from are strictly interlocutory, and were preliminary to the orders for the settlement of the final accounts. The appeal was taken before the reports of the master upon the final accounts, and before the orders of the Court sanctioning them, and before the final decree, discharging the trustees after their work, was done.

PART I.

Statement of the Suit and the Decree and Orders.

I.

The administration of the trustees from January, 1875, was occupied with the reconstruction of the railroad and the disincumbering the property from embarrassing litigations that involved the existence of the railroad. The site of its road-bed in New Orleans, the title to its various depots and wharf property, its claim on the Pontchartrain Railroad, the existence of the bridge over the Pearl river in Mississippi, the wharf and depot property in Mobile, and faculty to use the streets, were in contest; the questions of taxation in three States under its charter and the laws were concerned; works of novelty were erected, so that the timbers of the bridges might be preserved from the ravages of the vermin of the waters over which the railroad passed. In the autumn and winter of 1879, the trustees were prepared to close their administration. The master made a report of the debt due on the first deed of trust represented by the plaintiffs. His report showed that there was due on the 1st of January, 1880:

Principal in bonds outstanding.....	$4,000,000
Interest coupons, matured and outstanding...	1,903,040
Certificates issued by order of Court for repairs.....	700,000
	$6,603,040

The coupons bore interest at seven per cent., which is not calculated. This and the allowances to trustees' accounts unsettled made a first mortgage debt of near, if not quite, seven millions of dollars. The master's report, establishing the debt above set forth, was confirmed without opposition. The same

report established the debt of the company No. 2, represented by Oliver Ames and W. S. Williams, to be $2,760,000, making an aggregate of about $9,760,000, of incumbrance.

On the 5th of March, 1880, the decree of sale was entered in the Circuit Court in New Orleans, and is full, and was designed to provide for a full settlement of the trust. This decree established the first mortgage lien of the plaintiffs and the mortgage debt of bonds and coupons of interest for the sum before mentioned, the validity and binding effect of the certificates for the sum mentioned and their preference over other claims. It authorized the trustees to sell the property at auction, under their powers in the deed of trust and the powers and directions in the decree, to receive and to distribute the money as the deed of trust directs, to pay for ameliorations, repairs, replacements, for the expenses of the trust, including services of counsel and their own compensation.

The seventh section of this decree made provision for the appointment of and allowance of facilities to a purchasing committee in procuring a combination of the bondholders, and in making payments in bonds in place of money, and affording them time after the sale. The purchaser at the sale was to pay then and there a sum adequate to satisfy the preferential claims of the certificates and trustees' charges and allowances enumerated in the deed of trust.

The master and trustees were to determine before the sale what this sum should be, and to announce it at the sale for the information of bidders. This decree provided for a report of the sale to the Court, for the making of deeds to the purchasers, the termination of the custody of the receivers, a settlement of all the accounts of the trustees and their discharge from their office. The proceedings that followed were consequential and had the single aim to conclude the suit by a final decree. A sale was advertised, and was made the 24th of April, 1880.

Before the sale, the trustees, in concurrence with the master and the committee of bondholders, fixed the upset price at the sum of $900,000 to cover the preferential charges, and notice was given at the sale. The property was purchased at the sale by the purchasing committee, George Bliss, Louis A. Von Hoffman and Oliver Ames, for four millions of dollars.

The report of the sale was made by the trustees to the Court the 5th of May, 1880; the report was confirmed by order the 7th of May, 1880; this order directed the trustees to convey to the New Orleans, Mobile and Texas Railroad Company, as reorganized whenever the purchasers at the sale had fully complied with all the conditions of the sale and the deed was to be as operating as if it had been made to the bidders.

On the 24th of May, 1880, the trustees made their report that Bliss, Von Hoffman and Ames had complied with the conditions of the sale and had paid to them the sum of four millions of dollars their bid in money and in bonds and coupons so that the preferential claims might be satisfied, the coupons satisfied, and a credit was placed on the principal of three thousand eight hundred and sixty eight bonds presented by the committee. They reported that one hundred and thirty-two bonds had not been subscribed to the purchasing agreement and the trustees had a sum to pay the holders on presentation, their shares, and would deposit it with a trust company subject to the directions of the Court.

They reported the execution of deeds to the new corporation. On the 29th of May, 1880, they filed their final accounts accounting for each and all of the receipts of property and money that had come to their hands as public carriers, as trustees, as receivers, and what had been done with it by them in the course of administration as such, with their vouchers. These were referred to a master, examined, found adequate and correct, and the trustees were then discharged under orders made in June, 1880, confirming their final reports.

In this final account the money paid to themselves for their services, and to their counsel, is to be found. The whole account passed without opposition, no one item being objected to by any one person. The only matter open on the five years of administration consists of the matter of the appeal in this Court from orders of the 8th and 17th of May, 1880, and allowed the 21st of May, 1880, and made by the appellants alone and unsupported.

PART II.

The Controversy Contained in the Appeal.

I.

The decree of the 5th of March, 1880, providing for a sale of the property after establishing the first mortgage and the priority of its lien on the property, ascertained the bond debt to be on the 1st of January, 1880, of principal and interest, $5,903,000.

Under the deed of trust, the trustees were entitled to pay out of the incomes and the proceeds of sale for ameliorations, improvements, repairs, replacements, expenses, allowances, compensation, whatever was due before a distribution among bondholders. The certificates had been ascertained to amount to $700,000. The other items of charge had not been ascertained. The trustees and master were to settle what this account would be, provisionally, and for the purpose of fixing the upset price to be paid in cash money at the sale. These charges were to be sustained independently of, and preferentially to, that of the bondholders. Hence this clause in the decree, so that the purchasing committee and all others should be apprised.

The seventh section of the decree of March allows an agreement to be made and filed by a majority of bondholders, wherein a committee might be designated to buy the property at the sale for the subscribers, and to pay the price in bonds under reserva-

tions of rights to the bondholders who are not parties. This section of the decree provided that there should not be required any sum of money to be paid at the sale "than shall be sufficient in the opinion of the *master and* trustees to assure the payment of the charges and privileges upon the fund as shown in the decree, and those arising out of expenses of management, conduct of business, repairs, ameliorations, incidental charges of administration and compensation for service, for which there was not money on hand. The master was to ascertain this and to notify the amount at the sale."

The solicitor of the plaintiffs filed with the master a statement to show the amount which ought to be required at the sale in order to carry out the commands of this section of the seventh article of the decree on the 29th of March and 2d of April, 1880, before the sale day to fulfil this article of the decree.

The specifications were the certificates.....	$700,000
Allowance to Mr. Parsons of counsel.....	15,000
Allowance to the master.....	5,000
Allowances of the trustees, a salary of..... for their annual service.	25,000
Allowance to solicitor.	20,000

Thompson and Williams promptly appeared and filed an opposition, alleging that each item of the statement was exorbitant, illegal, extravagant, and not to be thought of as suitable. This was done on the 3d of April.

The reply to that was that Williams and Thompson were, to be sure, mentioned in the purchasing agreement, in an undefined capacity of interposed persons or brokers, but that they had no title to appear in this proceeding, which was intended to speed the execution of the decree of sale, as before mentioned.

The master took no action, but fixed with the trustees and the committee, subsequently, the upset price at $900,000.

On the 20th of April, 1880, the solicitor of the trustees, by the instructions of the trustees and of the committee of bondholders, withdrew the statement of charges, and substituted another paper which the trustees directed. No charge or amount of claim is specified for the acting solicitor. The decision on that charge was referred to the Court as the paper shows on its face.

Williams and Thompson maintained their opposition as before, and Williams also obtained liberty to go before the master as a trustee of the second mortgage and as a subscriber of bonds. The master made his report on the 2d of May, 1880. An appeal was taken by the trustees on the 3d, and the conclusions of the report, as to the trustees and the solicitor, were overruled by the Court in the order of the 8th of May, 1880. The master reformed his report to correspond with that order, and on the 17th of May exceptions to this reformed report by Williams and Thompson were dismissed. The appeal was allowed the 21st of May, 1880. The subject of the appeal is circumscribed to the decision of the Court overruling the master's report in the order of the 8th of May. The reformed report complied with that order. The reformed report, conformed to the order passed the 8th of May and the exceptions thereto, raised no question for the Court. A rehearing on the exceptions filed, or the filing of exceptions upon the final account, were the courses open to the appellants.

PART III.

What Title to Arraign the Order does Williams, Trustee, Show to the Court?

I.

The money allowed to the trustees, Morgan and Raynor, was paid for compensation as trustees and receivers during the five years and five months of administration, care and custody of the

property described in the deed of trust. By the terms of this deed of trust, the moneys expended for ameliorations and repairs and due for service, were charges to be paid in preference to any sum due to the bondholders. The additional sum of money paid out by the trustees on account of the reformation of the report and contained in the order is about the sum of $120,000. The entire sum in the hands of the trustees arising from the administration and the sale of this property amounted to about four millions of dollars. The debt declared to be due in the decree of sale upon the first mortgage deed of trust represented by Morgan and Raynor is the sum of $6,603,040, besides interest of seven per cent. upon each of the coupons from its maturity till paid not calculated in the decree but allowed. The fact then appears sufficiently that Williams as trustee had no title to any portion of the money which Morgan and Raynor were charged to disburse in any possible contingency. There was a deficiency in the sum necessary to make the payments in their deed, if there had been no preferential charges of near or fully two millions of dollars. The preferential charges increased that deficiency. So that no surplus for the payment of any sum on the second mortgage exists.

Williams was the agent for the Louisville and Nashville Railroad Company, and his commissions as such agent was dependent upon the fact that the property should be sold for a minimum price. His negotiations with the bondholders had for the object to reduce the demands upon the purchasers so-called in the purchasing agreement.

There is a stipulation that all second mortgage bondholders and the stockholders of the company No. 2 should be cut off. His interest then as trustee in the second mortgage was by his own act made nothing. This claim to appear before the master to contest the allowances as trustee was preferred when the absence of a surplus had become evident. It does not appear that he consulted with his co-trustee or acted with his consent.

The title of the two trustees is joint and and one was not entitled to act without the other. These trustees might have contested illegal or exorbitant claims on the fund in the hands of the trustee if those claims reduced a surplus or prevented a surplus from being created. In the case before the Court, the amount of the claims allowed in the order of 8th May if it were increased fifteen times over would not show a case where a second mortgage trustee could come in with an opposition.

A party whose rights are not infringed by an order or a decree is devoid of capacity—is legally incompetent to appeal from it.

Crawshay vs. Soutter, 6 Wall., 639.
Howe vs. Vanshaick, 7 Paige, 221.
Card vs. Bird, 10 *Ibid.*, 426.

2. If there had been a surplus in the hands of Morgan and Raynor after satisfaction of the claims upon them the Trustees would have reported it in their final account. The trustees in their final account would show all of their administration.

It is only after settling with their own constituents were they responsible to make an account with the trustees of the second mortgage. One trustee has no claim to prefer an account, or to make an opposition to the account as stated.

1 Perry on trusts, sec. 411; Tiffany and B. on trustees, 539.
Ridgeley vs. Johnson, 11 Barh., 327.
Bockes vs. Hawthorne, 78 N. Y., Rep. 222.
Cayler vs. Moreland, 6 Paige, 273.
Idly vs. Bowen, 11 Wend., 238; 7 Paige, 18.

Both trustees should have united in an opposition, if one was to be made.

II.

Williams and Thompson as Agents or Brokers of Louisville and Nashville Railroad Company.

I.

This firm is introduced by a purchasing agreement, made the 10th of February, 1880. When they filed their opposition the 3d of April, 1880—this was three weeks before any sale under the decree of the 5th of March, 1880,—Williams was a party to the cause as trustee of the second mortgage. Williams and Thompson were only nominated in the purchasing agreement as purchasers, in a great variety of contingencies, some of which had not been fulfilled, for there had been no sale. The object of the presentation of the paper to comply with the seventh article of the decree, they had nothing whatsoever to do with. The master and the trustees by the decree were to settle the upset price and did settle it. When the paper presented the 20th of April, 1880, as a substitute to settle the allowances, these persons still retained their paper filed on the 3d, and Williams, trustee, &c., offered to support it. The bondholders, in December, 1879, made two purchasing agreements in anticipation of a decree of sale which the trustees had moved for in that month, and which had been prepared for by preliminary reports. George Bliss, L. Von Hoffman and Oliver Ames were selected to be this committee. The agreements were irrevocable, and the bonds were all deposited, subject to the control of the committee who had general powers to arrange all that might be necessary in their discretion.

The motions made in December for the entry of a decree were deferred, and, on the 10th of January, a purchasing agreement was made, which Williams and Thompson sign as distinct parties, denominated "Purchasers."

These persons, it would seem, had expected to have a purchasing agreement with a majority of bonds under their control; failing in this, they made a contract with a committee organized under other agreements. After some preparatory arrangements, the parties agree that the purchasing committee will buy and pay the price in the bonds subscribed so far as practicable. The bidding should be directed by Williams and Thompson. The committee, in case of their purchase, were to receive the six per cent. bonds of the Louisville and Nashville Railroad Company, bearing six per cent. interest from the 1st of January, 1880, having fifty years to run, for the bonds held by them and secured by the deed of trust represented by the plaintiffs, bond for bond, and in the event that all the bonds included in the deed of trust, the share of those not subscribed were to be paid to the purchasing committee, to enable them to pay off the bid. Besides, they were to furnish to the committee the money to pay all of the preferential charges specified in the deed of trust and the decree of the Courts, and are referred to as the certificates, expenses of trustees, charges of compensation. The preferential charge of certificates had been ascertained in the master's report that dispose of the question of the debt. The Louisville and Nashville Company, above mentioned, issued five millions of dollars in their bonds, so that there should be the same number of bonds as are provided in the deed of trust, (4,000,) and besides an additional thousand bonds, of one thousand dollars each, with which to pay off the preferential claims. William and Thompson were to manipulate these bonds for the Louisville and Nashville Railroad Company. Their commissions or compensation were what they could make or save in the manipulation. The Louisville and Nashville corporation were to have the property for the bonds they had thus issued. Bliss, Von Hoffman and Ames were to conduct the whole of the arrangements with the trustees, to the point when the trustess were to execute the deeds, after having been paid the price that should be fixed at the sale and by the confirmation.

The decree of the Court is a clear offer of the property for sale to the highest bidder. The sale was advertised in New York, New Orleans and Mobile, and no unusual indulgence was granted to the committee. They were to pay, cash down, the upset price, and the trustees were to require of every bidder exact compliance with the bid. The by-arrangements between Williams and Thompson did not come before the trustees to control them. The trustees had to receive the price bid at the sale, and nothing else, except bonds for their ratable value. When Williams and Thompson, on the 3d of April, filed opposition to the settlement of the upset price according to the decree, there had been no sale, nor had the purchasing committee any interest in the estate other than bondholders. The interest of Williams and Thompson depended upon contingencies that were not to happen for three weeks. This premature and uncalled for interposition is the only written opposition in the record. On the 3d of May, when the master furnished a report, the committee had not paid their bid, nor received any authority to assign to Williams and Thompson, or other person. These persons were expectants of some future act that would give them an interest.

On the 29th of May, the trustees submitted to the Court that the purchasing committee, Bliss, Von Hoffman and Ames, had, about the 13th of May, settled with them the bid of $4,000,000 for the property sold 24th of April. These gentlemen paid to them:

In cash	$ 963,790 06
Matured coupons with interest	2,224,531 48
They produced 3,868 bonds, and there was credited on each one of them $209.06	809,572 40

In the same report they reported that they had paid on account of certificates the sum of $700,000
The charges of trustees, counsel, solicitor and master, 185,000
They had money for non-subscribing bondholders, the remainder of cash.

It is fully shown by this exhibition that $3,100,000 were wanting to pay off the deed of trust represented by the plaintiffs, and there was nothing for Williams, trustee. Of the sum applied to the payment of preferential charges, Williams and Thompson had no claim to any portion. The seven hundred thousand dollars for certificates are declared in the decree of March, 1880. The order of sale required the payment in cash of money for them. The purchasers' agreement refers to them as a debt to be paid.

The other charges have the same rank in the deed of trust and in the decree of sale. Williams and Thompson were employés of Louisville and Nashville Railroad Company. These were strangers to make what they could. We propose to examine each of the claims of these appellants.

III.

Williams as Bondholder.

I.

This pretension was interjected as a distinct claim three weeks after the opposition, as an assertion, to aid that first opposition. The opposition states in indefinite terms that Williams and Thompson, as bondholders, would be put to charge and loss by having to pay the allowances or charges. We have no statement in the opposition of how many bonds they had, nor a description of them. The paper refers to the purchasing agreement as evidence of a right, but they do not state the bonds, and do say that the signatures are not on the paper filed, but they would file it. The papers are filed in the master's report, with no proof to establish the facts. The purchasing committee came to the trustees with 3,868 bonds to make a settlement of their bid. This was the office they were to perform. The bonds were placed in their hands to make a settlement with the trustees. Williams had transferred the bonds he

may have had and had none when he interjected this claim. The purchasing agreement shows that the committee was to pay the money for the payment of the preferential charges, and all the costs, allowances, compensation, &c. The money was to be furnished to the purchasing committee. The money paid to the trustees for preferential charges and for the non-subscribing bondholders is handed over in May, about the middle of May. Three thousand eight hundred and sixty-eight bonds are brought by the committee. The matured coupons and interest are all paid as cash on the bid. The balances due to the owners on these bonds are credited on the bonds, and that credit is money to pay the bid made by the committee. Thereupon the trustees declare their willingness to sign a deed to Bliss, Von Hoffman and Ames. These three gentlemen, at this period, make an assignment to the New Orleans, Mobile and Texas Railroad Company, reörganized. This new corporation makes a mortgage to secure five millions of bonds of the Louisville and Nashville Railroad Company, and the Louisville and Nashville Railroad Company take possession from the trustees and indemnify them by a bond.

The trustees report the fact of these receipts and these disbursements to the Court. No exception is made to the receipts and none to the disbursements. The committee of bondholders make this settlement with the bonds in their hands. They agree for the bondholders that all the charges are legal and proper; that nothing more is due to the bondholder than the sum credited on the bond after the coupons are paid is the proper credit.

The Court examines the report. Considers of the account and approves it. None contest the report of this settlement; none contest the propriety of this settlement; none have appealed from this decree of approbation.

The eighth section of the purchasers' agreement is as follows: "It is a condition of this agreement that the receivers and

trustees shall, by the Louisville and Nashville railroad company or in some other satisfactory manner, be protected against all their obligations and liabilities from management, bonds, contracts or otherwise, and that all liens that may be declared to be superior to the first mortgage bonds, and that the certificates and liabilities, and lawful fees, charges and expenses of the receivers and trustees and disbursements of the committee, all to be decreed by the Court unless fixed by agreement, including all the expenses and charges of the foreclosure sale, and of the proceedings to carry out this agreement, less amounts which may be available in the receivers' hands for payment upon such certificates shall be paid in cash at the time, to be appointed by the Court for taking title under the foreclosure sale." The settlement made by the purchasing committee as reported the 29th of May, 1880, was the settlement we have been exposing to the Court. The committee had plenary power to make this settlement from the parties to the agreement and when this was made without further exception or opposition it became a final settlement. The precise object of the appointment of the committee and the deposit of the bonds and coupons with them was that the committee should stand face to face with the trustees, arrange the payments to be made with them, and "that the bonds and coupons so deposited shall be used by the committee to complete their purchase." The sums to be subtracted from the four millions of dollars bid were the sums payable upon the preferential charges. These charges determined the sum to be credited on the bonds. The committee might have made a contest upon the preferential charges but did not. They took the purchase as complete, contemporaneously with this settlement and in writing directed that the title be made to the New Orleans, Mobile and Texas Railroad Company reorganized. The committee were then enabled to make exchange of the bonds held by them for the bonds of the Louisville and Nashville Railroad Company. Williams and Thompson then could

decide how many of the bonds issued by the Louisville and Nashville Railroad Company would fall to their share as not needed for the purpose of the purchasing agreement. The amount is certainly $115,000, with other sums that probably make the amount $130,000 or $140,000. The sum exceeds the allowances to the trustees for five years and some months of service. It is fifty per cent. above all payments to counsel, solicitor and master during the same period.

This is a matter for the Louisville and Nashville Railroad Company. It illustrates, however, the argument that Williams, trustee of the second mortgage and Williams, bondholder, were in the opinion of Williams and Thompson but inferior personages. Williams and Thompson, purchasers, were willing that the property should be sold for a song, and that the purchasing agreement should be signed by a bare majority of bondholders. In that case there would have been a full million for these purchasers.

Williams has not shown in any pleading signed by him any description of the bonds that constitute him a bondholder. He did not claim in the first opposition to own bonds separately. The petition is a joint one and the allegations are made by Williams and Thompson. Before the master he produced no bonds and submitted no evidence of his holding. All the bonds before the Court were held and controlled by the committee, and that committee used them and obtained the property of the trustees by their production and use.

The question then is put did Williams have bonds when he signed his name to petitions? Has he shown that as bondholder he has an interest to the amount and value of five thousand dollars, in the additional sums allowed in the order of the Court of the 8th of May, 1880, to the several parties named in that order?

Bank vs. Daniel, 12 P., 32.

Brown vs. Shannon, 20 H., 55.

Terry vs. Hatch, 93 U. S., 44.
Seaver vs. Bigelow, 5 Wall., 208.
Rich vs. Lambert, 12 H., 347.

The appellees respectively submit to the Court their motion for the dismissal of the appeal, as having been taken contrary to the rules and the practice of this Honorable Court.

I.

That the appeal was taken and allowed and perfected in the Circuit Court from interlocutory orders made in the progress of the cause and preparatory to the rendering of a final decree made at the term some weeks after the appeal.

The final orders and decrees in the cause were rendered in the latter part of May and the early part of June, 1880. The decree of sale was made the 5th of March, 1880. The sale was advertised and the property sold 24th of April, 1880, while the Circuit Court was sitting. This sale was reported and confirmed the 7th of May, 1880, by the Circuit Court by an order giving further directions. In this order of May 7th, the report of the sale to Bliss, Von Hoffman and Ames is confirmed. This decree allows them whenever they shall have complied with all the conditions of the sale by payment of the price bid, they might assign to any one as they might be advised, their bid, and the trustees should execute the deed to the assignee. The trustees were also empowered to surrender their possession of the property and submit their accounts to the master for a final settlement. Under this order the purchasing committee came to the trustees, paid to the trustees cash wherewith to pay all the preferential charges, paid mature coupons which formed a large claim upon the fund, submitted three thousand eight hundred and sixty-eight bonds to have the amount paid on them,

written upon them. They paid a sum to meet the claims of bondholders who did not join in the purchasing agreement. The purchasing committee made an assignment to the New Orleans, Mobile and Texas Railroad Company, as reorganized, of the bid, and the trustees then made the deed to that corporation. They then surrendered all of the trust property to that corporation and obtained their receipt for it. This was reported 24th May, 1880.

The trustees having done these things in the execution of the decree of the 5th of March, 1880, and the subsequent orders towards the settlement of the trust, made a petition to the Court representing what had been done and why, asked for the confirmation, and then submitted all of their accounts for five years and three months for a final examination and for this discharge.

The Court referred the petition and accounts. The master went over the statements of receipts, disbursements, of the expense accounts, and the special expenses, and of running arrangements. All the payments for whatever cause, to the trustees, to their solicitors and counsel, to the master.

There was still in hand $8,673.37 from the business. There were $109,882.23 due still to bondholders who had not called for payment. The receipt of the purchasers and the assignment of the bid were shown to the Court as part of the master's report. The master recommended that all of the acts and doings of these trustees during the five years and three months be confirmed and that their accounts were correct and their vouchers sufficient. This bears date 1st of June, 1880.

The Circuit Court accepted the report and decreed in conformity to its recommendations. No exception was made to this report and none have appealed from the confirmatory decree. This was done June, 1880.

It is manifest that this decree was the final decree in the cause. The Court had before it the decrees appointing these trustees to manage the property. All the orders that from time to time had been made for regulation of their conduct. Their

returns, reports of management. The disbursements arising upon sales of property and the payments to the *cestui que trusts.* All the sums paid because of ameliorations and all for compensation. The sums of money on hand and the disposition to be made of those sums. The final orders dispose of all of these and the trustees were discharged.

It follows from the statement that the appeal made the 21st of May, 1880, to two orders that relate to isolated items of account in a five years' administration, before the money was in hand to pay the sums, and when the decrees in the Court had provided for a final settlement and a full examination of accounts, was premature and irregular, contrary to the statute law and the rule and practice of this Court, and we pray a dismissal of the appeal with costs.

Perkins vs. Fournequet, 6 H., 206; *ex parte* Jordan, 4 Otto, 248.
Crosby vs. Buchanan, 23 Wall., 42; 13 Wall., 51.
Húmiston vs. Stamthorp, 2 Wall., 106; 30 Cal., 11.
Ogilvie vs. Knox Co., 2 Black., 637.
Delop vs. Hunter, Sneed, 101.
Craighead vs. Willson, 199, 202.
Thompson vs. Hyatt, 19 N. Y., 535.
Montgomery vs. Anderson, 21 H., 386.
Matter of P. P. & C. J. R. Co., 67 N. Y., 372.

II.

Williams and Thompson, collectively, did not have and did not show in their opposition, made the 3d of April, 1880, in advance of any sale of the property, any title to appear before the master. The conditions of the purchasing agreement showed prospective and contingent advantages, as agents or managers for a railroad corporation, who desired to make a purchase after

there had been a sale and a purchase by the purchasing committee. There had been no purchase by this committee when the opposition was made. The committee had not acquired any title when the orders appealed from were entered.

The money appropriated by the Court to these allowances was not the money of Williams and Thompson, nor had they any claim on it under the deed of trust, nor any decree of the Court. Nor did they exhibit a debt or duty, to which the money in the hands of the trustees was applicable, in their opposition filed in the Court.

III.

The decree of March 5, 1880, disclosed a debt amounting to six million six hundred and three thousand and forty dollars.

There was interest to be calculated on matured conpons, which increased the debt to above seven millions the 13th of May, 1880, when the bid of the purchasing committee was paid. The intervention of Williams, trustee of a second mortgage, to dispute about the distribution of the sum of four millions bid at the sale, indicates improvidence and misconception of relations.

IV.

Williams and Thompson, and Williams as bondholder and as trustee of a second mortgage, must show that they are in a condition to litigate in the Circuit Court and to appeal to this Court. Williams was a party to the suit in the Circuit Court, Oliver Ames and W. S. Williams were joint trustees of a second mortgage which, by its terms, recognized the deed of trust represented by Morgan and Raynor. The sale showed conclusively that the second mortgage was "cut off," independently of the stipulation made by Williams, trustee, that it should be found in the purchasers' agreement.

The firm of Thompson and Williams are not parties in the cause. No interest is recognized in the pleadings, and none is shown in the proofs taken in the cause, to show any interest in the sum of money that is the subject of the orders of 8th of May, 1880, mentioned in the appeal. Neither do Williams and Thompson show that this interest is a pecuniary one, and that they would have five thousand dollars if their prayers were granted.

Nor does Williams state in any pleading, or in proof, that he personally, has any right or interest of the same magnitude.

V.

The sum of money appropriated for the payment of the expenses of the trust by the orders of the Circuit Court, and paid by the trustees, is money paid by the purchasing committee on account of their bid and entitled them to control the property. This payment was made the 15th of May, 1880, and the appropriation of it was reported to the Court the 29th of May, 1880.

The sum of money was a trust fund. The defendant in the cause, the grantor in the deed of trust; the bondholders secured in that deed, some of whom are defendants; the purchasing committee holding at the date of the order of appeal 3,868 bonds; The non-subscribing bondholders, who have an interest in the disposition of the money and have no connection with the purchasing committee or their agreement, should have been made parties to this appeal, if an appeal was at all permissible. These interested parties have not been summoned or are parties.

For the reasons set forth in the motion and opposition the appellees pray judgment and that the appeal be dismissed at the costs of the appellants.

JOHN A. CAMPBELL,
For Appellees.

111-684

SUPREME COURT U.S.
FILED
JAN 8 1883
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

WILLIAMS & THOMSON, APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, *et. al.*,
TRUSTEES AND APPELLEES.

THE ANSWER OF THE APPELLEES TO THE MOTION FILED BY APPELLANTS JANUARY 4th, 1883, IN THIS COURT.

I.

For answer to the article one, the appellees say the record was filed in this Court the 11th of October, 1880. The motion of the appellees to dismiss was filed the 11th of December last, and notice was given to the counsel of record in this Court, and in the Circuit Court the 13th of December last. The motion was delayed because of a discovery of the imperfection of the record filed by the appellants, and the necessity to support the motion with a complete record as will be seen hereafter.

II.

The petition of appeal designates with exactness that the subject of appeal is contained in two orders made in the Circuit Court at New Orleans. The orders and the petition of appeal are printed in the record printed by the appellants as part of the motion, pp. 38, 39, together with the orders and reports referred to, pp. 35, 36, 37. These we have printed are to be found on the last pages of the manuscript record, pp. 2857, 2861, of that prolonged document.

III.

The appellees in their motion affirm that the two orders, whether considered by themselves or in connection with the contemporary decrees and orders of the Circuit Court, and the import of the orders, cannot be deemed final orders or decrees, according to the statutes of the United States. They have printed the decree of sale made in March, 1880. The reports of the sale and the confirmatory orders directing how and when the money was to be paid to the trustees, how and when the execution of deeds was to be made to purchasers, delivery of the property perfected, and how the money was to be disbursed, and a full and final account of all their trust to be submitted.

These several acts were provided for in the decree of March, 1880. The two orders specified in the petition of appeal, being substantially one order, was a part and but a small part of the procedure, and in no respect final decrees.

The presentation of all of these orders, with the orders appealed from, enables the Court by inspection to determine their finality.

The facts in respect to these orders are shown, and cannot be otherwise shown than by the record, which is copied.

The honorable clerk of this Court informed us that the record would not be printed to enable us to present the motion, because

of the state of the finances, and hence we had to complete the record and to print the portions applicable to the motion at our own cost.

This is the answer to the second, third and fourth allegations of the motion of appellants.

IV.

The Specification 5 of the motion, if we understand it rightly, is mistaken and erroneous in matter of fact.

The appeal was taken to two orders some weeks before the term of the Circuit Court adjourned. The transcript terminates with the allowance of appeal 21st May, 1880. The proceedings of the cause were going on actively at the date of the orders on the master's report on the 8th and 17th.

The report of the trustees, of the payment of the money by the purchasers, their execution of the deeds of sale, their surrender of the property to purchasers, the method of disbursement, the actual disbursement—and all this being done, the presentation and settlement of these accounts took place in the Court between the 21st of May, 1880, and 20th of June, 1880, at the same term.

These proceedings the appellants did not embrace in their transcript filed in October afterward.

To support the assertion that this appeal was premature, we have submitted with our printed record a certified copy of the entire record commencing on the 21st of May, 1880, and including all of the proceedings in the cause during that term and until the discharge of the trustees.

We submit, the *appeal* was not justified: —

1. For the orders were not final orders or decrees, and were they obliterated there are decrees that embrace those orders and all other questions and controversies in the cause, and this appears by the record as printed.

2. Cumulative to this controlling objection, we have submitted that the appeal is defective as to the parties.

3. That the appellants, Williams and Thomson, had no interest in the subject. That Williams' trustee has no interest in the subject. That Williams' bondholder has never proved any bonds in the cause.

These last objections are subordinate to the first stated. Though our notices were served 13th of December on the attorneys of record in New Orleans, and in New York the 17th, as before stated, we were not advised that more of the record was required for use until the present week, and without a specification now of the deficient portions.

JOHN A. CAMPBELL,
Attorney for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON,
Appellants,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANTS.

J. HUBLEY ASHTON,
JAMES THOMSON,
Of Counsel for Appellants.

THOMAS MCGILL & CO., PRINTERS, WASHINGTON, D. C.

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Supreme Court of the United States.

October Term, 1883. No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON, PARTNERS AS WILLIAMS & THOMSON, AND WILLIAM S. WILLIAMS, INDIVIDUALLY AND AS TRUSTEE, APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, INDIVIDUALLY AND AS TRUSTEES AND RECEIVERS, APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

Before presenting this case it is proper to make the following statement in regard to the record, which the Court will perceive is an unusually voluminous one:

At the last term of Court, and before the record was placed by the clerk in the hands of the printer, the counsel for the appellants offered to enter into a written stipulation with the counsel for the appellees to reduce its bulk, by eliminating from the transcript as filed the mass of apparently irrelevant matter contained in it, and printing only such portions of it as bore more immediately upon the controversy involved in this appeal. The counsel for

appellees expressed his willingness to enter into such a stipulation, but preferred to consult his clients before doing so. Soon afterwards the clerk of the court informed the counsel for appellants that he had received from the counsel for the appellees a letter dated April 23, 1883, stating that upon consideration and consultation the appellees declined to make arrangement for the printing of the record, and that the clerk must simply conform to the rule of the court, and requesting him to inform the counsel of the appellants of this resolution of the appellees.

This is an appeal granted the appellants on May 21, 1880, from two orders or decrees of the court below, entered respectively May 7 and May 17, 1880, awarding certain allowances as compensation for services to the appellees, James A. Raynor and Edwin D. Morgan, as trustees and receivers, and their counsel, in a suit instituted by them, in the court below, on March 12, 1875, to foreclose the first mortgage on the railroad and property of the New Orleans, Mobile and Texas Railroad Company.

The appellees were the trustees in that mortgage, which was executed by the company, formerly called The New Orleans, Mobile and Chattanooga Railroad Company, on January 1, 1869, to secure a series of four thousand bonds of $1,000 each, payable July 1, 1910, with coupons for the payment semi-annually of an annual interest of eight (8) per cent.

The company, on July 1, 1874, made default in the payment of the interest due on that day, and never paid any interest afterward.

On March 12, 1875, the appellees, Raynor and Morgan, as trustees, filed their bill in the court below, praying a foreclosure of the mortgage and sale of the mortgaged property, and that they might be appointed trustees or receivers to take possession of the railroad and operate it. (Bill, Record, pp. 1-10.)

The defendants in the suit were the mortgagor corporation, which had been previously reorganized after a sale under a second mortgage, executed March 8, 1869, to Henry J. Gardner and Peter Butler, as trustees, William S. Williams, (one of the appellants here,) and Oliver Ames, as trustees of a second mortgage executed by the company, as reorganized, on October 8, 1873, and also Messrs. Gardner and Butler, the trustees in the original second mortgage referred to.

As the only questions presented by the present appeal relate to the allowances made to the complainants in the suit, as trustees and receivers, for services and counsel fees, it is sufficient to say, in regard to the pleadings in the cause, that no defence was interposed, and the allegations of the bill were substantially admitted by the answers of the defendants.

The history of the suit chiefly relates to the administration of the property, for five years and more, by the appellees, in their capacity as receivers under the appointment of the Circuit Court.

The bill having been filed on the 12th of March, 1875, the court, on the 17th of March, 1875, passed an order appointing the complainants, the appellees here, receivers, with all the powers and authority usually vested in receivers in like cases. (Rec., pp. 16–18.)

The road remained in their hands, as receivers, from that time until after its sale, on April 24th, 1880, under a decree of sale entered in the suit on the 5th of March, 1880.

After the trustees had held the road in their possession for nearly five years, an agreement was entered into, on the 10th of February, 1880, by the parties interested, for the purpose of accomplishing a sale of the property, which is denominated the PURCHASING AGREEMENT OF THE N. O., MOBILE AND TEXAS R. R. Co.

(See the Purchasing Agreement, Rec., pp. 579-586.)

The final decree of sale was entered on March 5, 1880, under and in pursuance of and for the purpose of accomplishing the object of that Agreement, and recognizes the Agreement and explicitly refers to it.

The Agreement was filed in the cause by the appellees on March 27, 1880, in accordance with a clause in the 7*th Article* of the decree of sale, (Rec., p. 586; Decree of Sale, Ib., p. 571,) and is to be distinguished from another instrument of prior date, viz., December 11, 1879, which had been signed by part of the bondholders, and which is referred to in the agreement of February 10, 1880, filed with the master on March 27. The agreement of December 11, 1879, was not filed under or in accordance with the decree, nor until the filing of the trustees' report in May, 1880.

Under this Purchasing Agreement of February 10, 1880, the future proceedings in the suit were carried on.

The parties to the Purchasing Agreement were (1) the subscribers, holders of the first mortgage bonds of the company, (called "*the bondholders*;") (2) Messrs. George Bliss, Lewis A. Von Hoffman, and Oliver Ames, a committee for such bondholders, (called "*the committee*;") (3) David Thomson and William S. Williams, the appellants here, (called, in the agreement, "*the purchasers*.")

The agreement was dependant upon the furnishing, by Messrs. Williams & Thomson, the purchasers, of a certain agreement of the Louisville and Nashville Railroad Company, which is referred to in the instrument; but such agreement was furnished, within the time limited therefor, and thereupon the Purchasing Agreement became absolute; and it was fully executed, and under it the property was purchased at the foreclosure sale under the decree of March 5, 1880.

The stipulations of this Purchasing Agreement, which is referred to and recognized, as we have said, in the decree of sale, as will appear more fully hereafter, important to be here observed, are the following:

1. Upon the delivery to the committee of the agreement of the Louisville and Nashville Railroad Company referred to, within the time limited, the road shall be sold under a decree of foreclosure and sale, in the pending cause. The decree to be drawn and settled by Messrs. Campbell and Parsons representing the committee and the trustees of the first mortgage, and by Messrs. Foster & Thomson representing the purchasers. The decree to be entered by consent and co-operation of both parties.

2. At the foreclosure sale, under this decree, the railroad shall be purchased by the committee for the purpose of carrying out the provisions of the agreement. In making any and all bids, the committee to act under the direction of the purchasers, (Williams & Thomson, the appellants,) either to be given in writing in advance of the sale, or to be given orally at the time of the sale by the purchasers.

3. The committee shall act in all respects in regard to the railroad and property, so to be bid off by them, as may be requested by the purchasers, (Williams & Thomson,) and shall assign their bid, or take title and convey the same to the purchasers, or make other disposition thereof, at such time, and in such manner, and to such person or persons, or to such corporation to be formed or reorganized, as shall be requested by the purchasers.

The final conveyance, transfer, and disposition of the property to be made upon receiving, in lieu and exchange for such of the four million first mortgage bonds as shall be deposited by the holders, in the manner provided in the agreement, new bonds, part of an issue of $5,000,000 of

bonds to be made by the Louisville & Nashville Railroad Company, and to be secured by mortgage upon the road and property then under foreclosure.

4. The price paid shall be sufficient to provide for the payment of all liens prior to the amount of the principal and interest secured by the first mortgage, and of all charges, expenses, and liabilities for the payment of which the decree shall provide other than said principal and interest.

The first mortgage bonds and coupons deposited, as provided in the agreement, subject to the order of the committee, for the purpose of the agreement, to be used by the committee, to complete the purchase. The cash needed shall be provided by the purchasers, (Williams & Thomson.)

5. The 8th article of the Purchasing Agreement provided that it should be a condition of the agreement—

"That all liens that may be declared to be superior to the first mortgage bonds, and that the certificates and liabilities and lawful fees, charges, and expenses of the receivers and trustees, and the disbursements of the committee, ALL TO BE DECREED BY THE COURT, unless fixed by agreement, including all the expenses and charges of the foreclosure and of the proceedings to carry out this agreement, less amounts which may be available in the receivers' hands for payment upon such certificates, shall be paid in cash at the time to be appointed by the court for taking title under the foreclosure sale, and that all amounts necessary to be paid to bondholders who shall not become parties hereto shall also be paid in cash at the same time, and the *purchasers hereby agree to provide the necessary amounts*, and for the purpose they will be entitled to such of the said five million dollars of bonds as shall not be exchanged for bonds deposited as above provided. Said bonds to become their absolute property, charged only with the payments herein last above provided for."

The decree of sale contemplated and provided for in the Purchasing Agreement was drawn and settled by and be-

tween the counsel named; and by their consent was entered in the cause on the 5th of March, 1880.

(See the Decree, Record, pp. 569–573; Consent of Foster & Thomson for purchasers, Williams & Thomson, under section 6 of agreement of February 10, 1880, to the entry of the Decree, Ibid, p. 568, folio 1045.)

The decree of sale, thus entered, in its seventh (7th) article referred to and recognized the Purchasing Agreement of February 10, 1880, and declared as follows:

"That it shall be competent for the holders of the majority or a greater number of the bonds, described in the deed of trust to the plaintiffs, to form an agreement appointing a Purchasing Committee; *or if such an agreement has already been made by a majority of the bondholders, the committee so appointed may act, if the agreement empowers, and the holders of any of the bonds or coupons secured in the deed of trust may become parties to the same, until within five days after the day of sale, upon conforming to the conditions imposed upon the other parties to the same, and shall have the same rights as the others. The committee may act and shall have the facilities herein set forth. A copy of this agreement shall be deposited with the master and be open to inspection ten days before the day of sale.*"

It was also provided in this decree that upon the purchase of the property under said agreement by the committee and at the sale—

"No more money shall be required than shall be sufficient, in the opinion of the master and trustees, to assure the payment of the charges and privileges upon the fund as shown by this decree, and the amount to be ascertained by the master's report before mentioned; and also the charges, including those arising under the orders of the court before mentioned, defined in the first article of the deed of trust, and consisting of expenses of management, conduct of business, repairs, replacements, ameliorations, incidental charges of administration, and for compensation

of service for which there is not adequate provision for payment from the moneys on hand, and these charges the master must ascertain and give notice of at the sale."

Under this provision of the decree a copy of the Purchasing Agreement of February 10, 1880, was deposited, on March 27, 1880, in the master's office by the counsel for the appellees. (Record, p. 586, folio 1062.)

It remained with the master open for inspection and for signature from the time of filing until five days and upwards after the sale.

The road and property were sold April 24, 1880, and were purchased by the committee under and as provided by the Purchasing Agreement; the appellants, as purchasers, giving the direction in relation thereto to the committee, and subsequently furnishing the consideration money, as required by the agreement; this including payment of the receivers, outstanding certificates and fees, and charges of the receivers and their counsel. (Report of sale by trustees and master, Rec., pp. 1171–1173.)

On the 9th of March, 1880, after the entry of the decree of sale, an order was entered in the cause, directing the master "to ascertain what sums are due under the article of the deed of trust referred to in the decree, and which provides for the payment of the expenses of management, charges for the custody of the property, compensation for service, and allowances to the trustees, and all other matters in the decree which are needful to the conclusion of the case." (Rec., p. 574.)

The proceedings before the special master under this reference are fully and clearly set forth in his report to the court, filed May 3, 1880.

(See Master's Report, Rec., pp. 613–616.)

The proceedings before the master continued from March 29 to May 3, 1880, when the master filed his report.

The master heard the parties interested, and testimony, submitted with his report, was taken. (Record pp. 621 to 1170.)

The appellants, Williams & Thomson, upon whom the burden of the payment of all expenses and allowances in the cause fell, under the purchasing agreement, and their obligation for such payment assumed therein, appeared before the master to oppose the claims made on the part of the appellees.

The contention on the part of the appellees, as trustees and receivers, was that the appellants were not entitled to be heard or appear before the master in the proceedings under the order of reference for that purpose.

That contention was disposed by the order of the court on April 23, 1880, made upon the petitions of the appellants, granting them leave to be heard before the master and the court to assert, maintain, and defend their rights. (See petitions and orders thereon, Rec., pp. 610–612.)

On the 29th of March, 1880, the solicitor and counsel for the appellees presented to the master a statement of the claims made for receivers' certificates, allowances to the appellees as trustees and receivers, and counsel fees.

In this statement a claim was made for an allowance to the appellees of $25,000 a year from the date of entry on the property, (February, 1875,) amounting to $129,166. (Record, p. 618; Master's Report, ibid, pp. 613, 614.)

A claim was also made, April 3, 1880, by the New Orleans counsel of appellees for the sum of $20,000 in full of all services to the trustees and receivers to May 1, 1880. (Rec., p. 620.)

On April 20, 1880, it appears, the counsel for appellees *withdrew* the claims submitted March 29, and presented a *new* statement of the claims made, in which the allowance

asked for the appellees, as trustees and receivers, was largely increased. (Record, p. 631; Master's Report, Rec., p. 614.)

The master, in his report, states as follows:

"On April 20, 1880, the solicitor for the complainants and the committee of bondholders withdrew the "previous claims (submitted March 29, 1880,) for any of the parties under the authority they conferred, all parties preferring to submit their claims anew, &c. The withdrawal was allowed as prayed for, whereupon the said claims were presented anew, and they are stated as follows, the whole being detailed in the said claim, marked "C C," submitted herewith, viz.:

Amount of certificates of indebtedness.....	$700,000	00
" due to John E. Parsons, professional services.....	15,000	00
" " J. A. Campbell, professional services, to be settled. (No objection having been made at the final hearing I have allowed the amount claimed on April 3, 1880).....	20,000	00
" " E. D. Morgan claims for $15,000 annually from date of filing bill to April 1, 1880, for services as trustee and receiver, amounting to.....	75,780	80
" " J. A. Raynor, likewise claims,...	75,780	80
" " allowance recommended for master's services.....	5,000	25
" " allowance for journey to N. Y. under decree, actual expenses....	177	00
" costs of the marshal in the cause.....		
" " " " clerk.....		
" attorney's docket fee.....	20	00

The amounts here claimed for the receivers and counsel were in addition to the sum of $13,000, which the master finds had been annually paid to Mr. Raynor, as the acting receiver, for the previous five years, and in addition to the

sums for legal expenses which had been paid monthly by the receiver, as shown in their accounts in the record.

The contest before the master was in relation to the allowances asked for by Messrs. Raynor and Morgan, which it was contended by the opponents were excessive, unreasonable and unjust, and could not legally be awarded in the cause.

No evidence was adduced before the master of any services whatever by Mr. Morgan. No evidence was adduced of any special services by Mr. Raynor, or of any services beyond his general superintendence and management, for which he had received compensation, under the order of the court made upon his assumption of the receivership.

Evidence was introduced, on the part of the appellants, taken both in New Orleans and New York, for the purpose of showing that the allowances claimed by the appellants were unreasonable and grossly excessive.

The master found in his report that the railroad, in this case, was only 141 miles long; that only one of the trustees, Mr. Raynor, was actively engaged in administering the trust, and was annually paid the sum of $13,000 for the last five years for the conduct of the business of the railroad; that the co-trustee, E. D. Morgan, never was engaged at any time on the property, but was consulted from time to time as to the management of the property, and that nothing was done by them in the course of their administration without an order of the court. (Rec., p. 615.)

He reported that considering the allowances heretofore made in previous cases of receivership, which are cited by him, that the exceptions of the appellants as to the amounts claimed by the appellees for their services as trustees and receivers, at the rate of $15,000 per annum, as being excessive, should be maintained, and that an allowance be

made to them for their services, at the rate of $5,000 per annum, from March 12, 1875, to May 8, 1880, amounting to $25,677.24, (the amount to be settled by and between them,) as a sufficient compensation for their services.

He reported, also, in favor of the allowance of the amount claimed on the part of the counsel of the appellees in New Orleans, ($20,000,) and the amount asked for the counsel in New York, ($15,000.)

The master's report thus concludes:

"The preferential charges, allowances and costs to be paid in the cause are as follows:

Amount for certificates of indebtedness.....	$700,000	00
" due to John E. Parsons.....	15,000	00
" " to J. A. Campbell.....	20,000	00
" " E. D. Morgan and J. A. Raynor, trustees,.....	25,677	24
" " for publishing notice of sale in New York, New Orleans and Mobile,.....	1,485	70
" " marshal of court.....	26	00
" " clerk.....		
" master's expenses to New York to deposit bonds.....	117	25
" master's fee for services left to the discretion of the court.....		
" cost of mortgage certificates.....		

The master's report was filed on May 3, 1880; and on the same day exceptions to the report were filed before the court on behalf of Messrs. Raynor and Morgan, "*in respect to the allowances made to the trustees and receivers and to the other parties, in the same,*" and the court was asked to set the report aside and direct reformation thereof.

(See Appellees' Exceptions, Rec., p. 1170.)

On May 7, 1880, the District Judge, holding the Circuit Court, entered a decree upon the report and the exceptions, ordering the master to reform his report (1) by an allow-

ance to the trustee, Edwin D. Morgan, of a salary of $10,000 per annum during the period of the receivership; (2) by an allowance to the trustee, James A. Raynor, of a salary of $15,000 per annum during the same period; (3) by substituting for the allowance to John A. Campbell, for his professional services as counsel and solicitor, a salary of $6,000 per annum from the commencement of the trust until the conclusion of the same.

The decree further directed that *all of these sums should be paid without reference to any other allowances; that all of the allowances should be made from the commencement to the end of the trust;* and that the report be recommitted that the alterations might be made.

(See the Decree of May 7, 1880, Rec., p. 1232.)

The reformed report of the master, under this order, was filed on the 8th of May, 1880; and he reported as follows:

"That pursuant to the said directions, he has reformed the said report. The preferential charges, allowances, and costs to be paid in the cause are as follows:

1. Amount of certificates of indebtedness	$700,000	00
2. Amount of allowance to J. E. Parsons, counsel fees, from February 1st, 1875, to May 8th, 1880, 5 years 3 months and 8 days	15,000	00
3. Amount of allowance to J. A. Raynor, trustee, from date of entry upon the property, February 1st, 1875, to May 8th, 1880, 5 years 3 months and 8 days, @ $15,000 per annum	79,083	28
4. Amount of allowances to E. D. Morgan, trustee, same time as J. A. Raynor, @ $10,000 per annum	52,722	15
5. Amount of allowance to J. A. Campbell, counsel fees, from February 1st, 1875, to May 8th, 1880, 5 years 3 months and 8 days, @ $6,000 per annum	31,633	28
Carried forward	$878,438	71

Brought forward.....	$878,438 71
6. Amount due for publishing notices of sale in New York, Mobile, and New Orleans	1,485 70
7. Amount due of solicitor's docket fee.....	20 00
8. Amount due to the marshal of the court...	26 00
9. Amount due to the clerk of the court.....	47 90
10. Amount due for certificates of mortgages.	20 00
11. Amount due to the master, expenses to New York to deposit bonds.....	117 25
12. Amount due to the master for his services, fixed by the court.....	5,000 00
Total.....	$885,155 56

See Reformed Report, Rec., p. 1236.

On the same day exceptions were filed, by the appellants, to this amended or reformed report of the master, made in pursuance of the order of the court of May 7, 1880, in respect to the allowances made therein to Messrs. Raynor and Morgan and to Mr. J. A. Campbell, on the ground that the allowances made to them, in the original report of the master, were reasonable, just, and sufficient, and that the evidence submitted to the master and the court did not justify the allowances made to those parties in the reformed report.

(Appellants' Exceptions, Record, p. 1237.)

On May 17, 1880, the court below passed an order dismissing those exceptions.

(See order of May 17, 1880, Record, p. 1237.)

On May 21, 1880, an appeal was allowed the appellants from the said decree of May 7, 1880, sustaining the exceptions filed by the appellees to the master's original report of May 3, 1880, and ordering the same to be reformed conformably to that decree, and also from the said decree of May 17, 1880, dismissing the appellants' exceptions to the reformed report of the master filed on May 8, 1880.

This is the appeal now before the court upon the present record.

STATEMENT OF FACTS AS TO THE ALLOWANCES.

The New Orleans, Mobile and Chattanooga Railroad was constructed in 1869, 1870, and 1871. It extended from New Orleans to Mobile, and was 141 miles long. James A. Raynor, one of the appellees, was the president of the company during its construction, and as its president received a salary of $10,000 a year. (Rec. p. 90.)

After the sale, under the original second mortgage, by Gardner and Butler, trustees, the salary of the president was $5,000 per annum. (Rec., p. 91, fol. 265.)

The amount of the first mortgage bonds was $4,000,000.

There was a second mortgage of $2,000,000, and there were $4,000,000 of stock.

Its traffic was insignificant, and its investors came to grief. The first mortgage bondholders lost four years' interest. The second mortgage bondholders and stockholders lost all, principal and interest.

The appellees, Messrs. Raynor and Morgan, were in office, as receivers, five years and three months.

For their services and counsel fees there was awarded in the aggregate, $288,976.87.

Shortly after the appointment of the receivers an application was made by them to the Circuit Court to fix and settle the subject of their compensation. (Rec., pp. 88-92.)

The application was put upon the ground that Mr. Raynor was the acting trustee, and the allowance of salary was made to him as such, and for it he was to perform apparently every possible duty.

The evidence upon which the application was made showed that "the duties performed by Mr. Raynor are those of a general superintendent and a president of the company, besides the trustees stand in the stead of the company." (Rec., p. 92.)

Upon such evidence the master reported (Rec., p. 89) as follows:

"4. Considering the care and re-ponsibility of a general manager, performing the duties of a president, directors, and manager of such a railroad as the one involved in this cause, the compensation ought to be adequate. An allowance of $10,000 per annum, with necessary expenses not to exceed $2,500 per annum should be made to Mr. Raynor for his services from the first day of February, eighteen hundred and seventy-five, and the same charged under the head of extraordinary expenses."

Upon this report of the master the court ordered "that in reference to the allowance to the trustee that the same stand confirmed unless exception be filed thereto in twenty days, for which purpose let it be filed and be open to exception." (Rec., p. 92.)

Thereupon and thereafter the trustee drew the compensation fixed for him by the court, and the item appears throughout the record in the periodical reports of the trustees under the name of "superintendence and general expenses," and among what are classed as "extraordinary expenses."

Mr. Howell, the treasurer, also proves the payments. (Rec., p. 623.)

The whole amount allowed for disbursements, $2,500 per annum, was also drawn without any statement of expenses appearing, so that practically the order was treated as an allowed salary of $12,500.

Even this amount was exceeded. The trustees' reports show the habit, on the part of Mr. Raynor, of drawing $1,083 33 monthly, or $13,000 a year, and the master finds (Rec., p. 615) that Mr. Raynor was annually paid the sum of $13,000.

The trustees' "condensed statement" for four years and ten months, up to November 30, 1879, shows the item to be $61,132.18. (Rec., p. 522.) The "condensed state-

ment" for twelve months, filed March 22, 1880, shows that he continued to take at the rate of $13,000 annually afterwards. (Rec., folio 1054, p. 577; also folio 1086, p. 610.)

Thus Mr. Raynor drew from the trust fund, in addition to the amount allowed him by the orders herein appealed from, $66,548.83.

The District Judge, holding the Circuit Court, added an *additional* salary of $15,000 a year, to relate back to the commencement of the receivership, and to be in addition to the salary already fixed by the court upon his application, making the sum of $79,083.28. Add the two amounts, $66,548.83 and $79,083.28, and we have the total taken by Mr. Raynor—*one hundred and forty-five thousand six hundred and thirty-two* $^{11}/_{100}$ *dollars*, ($145,632.11.)

The record shows that he was not in New Orleans attending to the property one-half his time in any year of his receivership, and that a full corps of operatives was employed, at sufficient salaries, for running the road and taking care of the property, including Mr. Robinson, the general superintendent, Mr. Howell, treasurer, and Mr. Stevenson, auditor. (Rec., pp. 623, 625.)

During the five years, three months, and eight days of the receivership Mr. Morgan took no active part in the management of the trust or property. His position as receiver and trustee was that of a sinecure. He never saw the property. The allowance made to Mr. Raynor was upon that understanding—Mr. Raynor, by the arrangement between themselves, assuming the duties and taking the pay. The order to that effect, above mentioned, was entered by the solicitor for both of the receivers. There is no evidence in the record that Mr. Morgan performed any service whatever. The Circuit Court gave him out of the property $52,722.15.

The statements of the trustees, in the record, show payments to have been made as legal expenses every month. No month

passed without these payments. These monthly payments, so made, are nearly uniform in amount, and indicate an arrangement for payment of counsel in a monthly salary. There is no payment in any month indicating charge made of any special fee for any special service. There appears to be a charge each month in the column called "general expenses" of $300, and an additional charge of somewhat larger amount in "extraordinary expense" column. The proportion of these items is shown in the condensed statement for four years and ten months, (Rec., pp. 522, 524,) as follows:

Law expenses (in "general expenses").....	$19,101	50
do. (in "extraordinary expenses")...	21,387	83
Total for four years and ten months.....	$40,489	33

Or, on an average, of about $700 a month, or $8,400 a year. Add to this for the remaining five months $3,500, the total paid for law expenses by the trustees, independently of the additions of the Circuit Court herein appealed from, would appear to be $43,989.33.

In addition to this amount the counsel, in New Orleans, of the receivers and trustees applied to the Circuit Court for a sum of $20,000. The Circuit Court not only allowed the claim, but voluntarily added an additional sum of $11,633.28, making $31,633.28.

The Circuit Court also allowed to the New York counsel of the trustees and receivers $15,000, making for law fees during the five years and three months the following amounts:

Amounts allowed monthly, aggregating.....	$43,989	33
Amount allowed for New Orleans counsel, additional salary of $6,000 a year.....	31,633	28
Amount allowed New York counsel.....	15,000	00
Counsel fees.....	$90,622	61

The total fees taken from the property are summarized as follows:

To James A. Raynor	$145,632 11
To E. D. Morgan	52,722 15
Counsel fees	90,622 61
	$288,976 87

ASSIGNMENT OF ERRORS.

The court below erred:

1. In entertaining the exceptions, so called, on the part of James A. Raynor and Edwin D. Morgan, to the several conclusions of the master in his report filed May 3, 1880, in respect to the allowances made to the trustees and receivers and to the other parties in the same.

2. In not dismissing and overruling the exceptions of James A. Raynor and Edwin D. Morgan, trustees and receivers, to the report of the special master, filed May 3, 1880, as to the allowances to those parties and John A. Campbell, the solicitor, for their respective services, and in not confirming the said report of the special master in respect to the said allowances.

3. In sustaining, by the decree of May 7, 1880, the said exceptions of the said Raynor and Morgan to the said report of the special master, and ordering, by the said decree, the master to reform his report as to the said allowances in the manner mentioned and directed in and by the said decree.

4. In ordering, by the said decree of May 7, 1880, that the master to reform his said report by an allowance to the trustee, Edwin D. Morgan, of a salary of ten thousand dollars ($10,000) per annum from the date specified in the

said report, instead of the annual allowance reported; that this sum be paid without reference to any other allowances; that the said allowance be made from the commencement to the end of the trust; and that the said report be recommitted that the said alteration might be made.

5. In ordering, by the said decree of May 7, 1880, that the master reform his said report by substituting the sum of fifteen thousand dollars ($15,000) per annum instead of the sum stated in the said report according to the dates therein, for James A. Raynor, trustee; that this sum be paid without reference to any other allowances; that the said allowance be made from the commencement to the end of the trust; and that the said report be recommitted that the said alteration might be made.

6. In ordering, by the said decree of May 7, 1880, the master to substitute for the allowance to John A. Campbell a salary of six thousand dollars ($6,000) per annum, from the commencement of the trust until the conclusion of the same; that the said amount be paid without reference to any other allowance; and that the said report be recommitted that the said alteration might be made.

7. In dismissing, by the order or decree of May 17, 1880, the exceptions of William S. Williams and David Thomson, named in the contract dated February 10, 1880, as the purchasers, to the amended or reformed report of the master, filed May 8, 1880, made in pursuance of the said decree of the court below rendered May 7, 1880, in respect to the allowances made to the said trustees, Edwin D. Morgan and James A. Raynor, as trustees and receivers, and to John A. Campbell, which said exceptions were on the ground that the allowances to the said parties, made in the original report of the master, filed on May 3, 1880, are reasonable, just, and sufficient, and the evidence submitted

to the master and the court did not justify the allowances made to said parties in the said reformed report.

8. In dismissing, by the order or decree of May 17, 1880, the exceptions of William S. Williams, personally, as bondholder of first mortgage bonds made by the defendant corporation, and as trustee under the second mortgage of the said company, to the amended or reformed report of the master, filed May 8, 1880, made in pursuance of the said decree of the court below, rendered May 7, 1880, in respect to the allowances made to the said trustees, Edwin D. Morgan and James A. Raynor, as trustees and receivers, and to John A. Campbell, which said exceptions were on the ground that the allowances to the said parties, made in the original report of the master, filed on May 3, 1880, are reasonable, just, and sufficient, and the evidence submitted to the master and the court did not justify the allowances made to said parties in the said reformed report.

9. In not deciding that the allowances made to the said trustees, Raynor and Morgan, as trustees and receivers, and to the said John A. Campbell, respectively, in the original report of the special master, filed on May 3, 1880, were just and sufficient, and that the evidence submitted to the master and the court in this case did not justify the allowances made to the said parties in the said reformed or amended report, filed on May 8, 1880, or either or any of them.

10. In allowing to the said J. A. Raynor, as trustee and receiver, in addition to previous allowances, the sum of $79,083.28.

11. In allowing to the said E. D. Morgan, as trustee and receiver, the sum of $52,722.15.

12. In allowing as counsel fees to the said J. A. Campbell the sum of $31,633.28.

ARGUMENT FOR APPELLANTS.

I. The Motion to Dismiss the Appeal.

First.

The jurisdiction of this court to review upon appeal the orders and decrees of the court below making allowances to the receivers and counsel, in the cause, as compensation for their services in relation to the trust property, cannot, we apprehend, be the subject of any doubt.

The principle in regard to this jurisdiction was fully and clearly stated in the opinion of the court, delivered by Mr. Justice Miller, in the leading case of *Blossom* v. *R. R. Co.*, (1 Wall., 655,) and reaffirmed and applied in *Hinckley* v. *R. R. Co.*, (94 U. S., 468; 100 U. S., 157,) and *Cowdrey* v. *R. R. Co.*, (93 U. S., 352,) and has been recently declared in the case of *Trustees* v. *Greenough*, (105 U. S., 531.)

In *Blossom* v. *R. R. Co.* (supra) the court said:

"It seems to be well settled that after a decree adjudicating certain rights between the parties to a suit, other persons having no previous interest in the litigation may become connected with the case in the course of the subsequent proceedings in such a manner as to subject them to the jurisdiction of the court, and render them liable to its orders, and that they may in like manner acquire rights in regard to the subject-matter of the litigation, which the court is bound to protect."

In *Hinckley* v. *R. R. Co.* (supra,) the court entertained an appeal by the receiver from the decree of the Circuit Court determining his allowances in the cause. The Chief Justice there said:

"The receiver cannot and does not attempt to appeal from the decree of foreclosure or from any order or decree of the court, except such as relates to the settlement of his

accounts. To that extent he has been subjected to the jurisdiction of the court, and made liable to its orders and decrees. He has, therefore, the corresponding right to contend against all claims made against him."

In *Cowdrey* v. *R. R. Co.*, (supra,) the court reviewed upon appeal the allowance made by the order of the court below to the counsel employed by the trustees of the mortgaged property as compensation for his professional services in relation to the property.

In the recent case of *Trustees* v. *Greenough*, (105 U. S., 527,) the appellable characters of certain orders of the Circuit Court in a suit for the recovery of trust property, allowing costs and expenses to the complainant, came under examination, and it was held that the proceedings upon the complainant's petition for allowances were so far independent as to make the order in question, which finally determined that matter, a final decree for the purposes of an appeal to this court.

Mr. Justice Bradley, delivering the opinion of the court in that case, said:

"The first question is, whether these orders do or do not amount to a final decree, upon which an appeal lies to this court. They are certainly a final determination of the particular matter arising upon the complainant's petition for allowances, and direct the payment of the money out of the fund in the hands of the receiver. Though incidental to the cause, the inquiry was a collateral one, having a distinct and independent character, and received a final decision."

SECOND.

The contention on the part of the appellees that the orders of May 7 and May 17, 1880, fixing the allowances to the receivers and counsel in this cause, are mere interlocutory orders, and are not a final decree for the purpose of an appeal to this court, cannot be sustained. Those orders

undoubtedly amount to a final decree, from which an appeal lies to this court.

1. The decree of May 7, 1880, as we have seen, was rendered upon the exceptions filed before the court on behalf of the trustees and receivers, to the master's report of the 3d of May, determining the allowances to be made to those parties and the counsel for their respective services. (See the Report, Rec. p. 616; Exceptions of Trustees, Ibid, p. 1170.)

The trustees, in their exceptions, prayed the court "to set the same aside and direct reformation thereof."

By the decree of May 7, 1880, upon the report and the exceptions, the court overruled the master's decision, adjudged the specific rate of compensation, payable to the receivers and their counsel, instead of that fixed by the master, declared that the allowances were to be made from the commencement to the end of the trust, directed the master's report to be reformed accordingly, and ordered the amounts awarded to be paid without reference to any other allowances. (See the Decree, Rec. p. 1232.)

The decree thus settled absolutely the merits of the controversy in regard to the allowances, and determined the rights of the parties, and after that nothing was left for the master but the ministerial duty of reforming his report conformably to the directions of the decree, and liquidating the amount to be paid to each of the claimants according to the rate of compensation fixed by the court.

On the 8th of May the reformed report liquidating the amounts was filed by the master, (Rec., p. 1236,) and on the same day the appellants, from abundant caution, excepted to the report "in respect to the allowances made to the trustees, E. D. Morgan and J. A. Raynor, as trustees and receivers, and to John A. Campbell, on the ground that the allowances to said parties made in the original re-

port of the master, filed on the 3d of May, 1880, are reasonable, just, and sufficient, and the evidence submitted to the master and the court does not justify the allowances made to said parties in the said reformed report." (Rec., p. 1237.)

On the 17th of May the court passed an order dismissing the exceptions, and the reformed report of the master accordingly stood confirmed.

It cannot be denied, therefore, that by the orders of May 7 and May 17, 1880, the matter of the allowances to the appellees upon their claim for compensation and counsel fees, received a complete and final determination by the court below, and it would certainly indicate a serious defect in our Federal jurisprudence, which it has not been supposed heretofore existed, if those orders were not a final decree for the purposes of appeal to this court.

After the order of May 7 there was nothing left for the purchasers to do but pay the trustees the amounts awarded by the court, if they desired to save the rights which they had acquired by the bid for the property at the sale, on April 24, under the decree of the 5th of March, 1880.

The orders fixed the amount of the cash payment to be made by the purchasers, and that payment was required by the decree of sale (article 7) to be made within fifteen days from the time fixed for the completion of the purchasing agreement, which was five days from the day of sale. And the same article of the decree of sale declared that "no confirmation of the sale nor change of possession shall take place in favor of any purchaser until all conditions are fulfilled." (See decree, Rec., p. 572.)

The purchasers were effectively *obliged*, therefore, to pay the amounts allowed by the court within that time or lose the property.

It cannot be maintained that decrees for the payment of money, which were thus enforceable, are not final decrees

within the meaning of the statute regulating appeals to this court.

After the orders of May 7 and 17, 1880, there was nothing left for the trustees to do, so far as the moneys paid for the preferential charges and the receiver's allowances were concerned, except to put them in their *own pockets;* and with respect to the other amounts awarded by these orders, the decrees expressly named the parties to whom the money was due and to whom it was to be paid.

As those orders thus dealt with a part of the proceeds of the sale of the property they were in effect decrees distributing those proceeds, from which an appeal unquestionably lies to this court.

Mr. Justice Matthews, speaking for the court in the recent case of *Railroad Company* v. *Fosdick,* (106 U. S., 83,) said:

"In the present case the decree of April 12, 1877, in effect distributes the proceeds of the sale upon the basis of the finding and declaration in the decree for foreclosure, that the principal of the bonds had become overdue. * * * * * It is manifest that a substantial error to the prejudice of one of the parties may originate in a decree distributing the proceeds of a sale under a decree of foreclosure, and no question can be successfully raised against the right to appeal from such a decree."

2. It seems to be contended, on the part of the appellees, that, as the orders in question were orders in *execution* of the previous decree of sale, no appeal lies as to them. But that is no objection to the finality of the orders, in the sense necessary to authorize an appeal, as was distinctly decided in *Forgay* v. *Conrad,* (6 How., 201,) *Blossom* v. *R. R. Co.,* (1 Wall., 656,) and in *Railroad Co.* v. *Fosdick,* (106 U. S., 83.)

In the last case Mr. Justice Matthews, speaking for the court, said:

"It is now contended by the appellees that these decrees are merely orders in execution of the previous decrees of the court; are, therefore, not final in the sense necessary to authorize an appeal; and that, consequently, as to them, the present appeal must be dismissed for want of jurisdiction. But, according to the rule adopted in *Forgay* v. *Conrad* and *Blossom* v. *R. R. Co.*, an appeal will lie from such decrees, according to the nature of their subject-matter and the rights of the parties affected."

3. The next contention, on the part of the appellees, appears to be that the decrees of May, 1880, in regard to the allowances, were not *final*, because something yet remained for the court below to do to bring the cause to a conclusion; and that, until the money was all distributed among the persons claiming under the deed of trust, and the accounts were examined and passed on, the right of appeal from the orders in question was in abeyance. But that idea is opposed to multitudinous decisions of this court from *Whiting* v. *Bank*, (13 Pet., 6,) and *Forgay* v. *Conrad*, (6 How., 201,) to *Railroad Co.* v. *Fosdick*, (106 U. S., 70,) including the cases of *Canal Co.* v. *Beers*, (1 Black., 54,) *Bronson* v. *Railroad Co.*, (2 Black., 531,) *Railroad Co.* v. *Soutter*, (2 Wall., 443,) *Minn. Co.* v. *St. Paul Co.*, (2 Wall., 639,) *Thomson* v. *Dean*, (7 Wall., 345,) *Stovall* v. *Banks*, (10 Wall., 586,) *French* v. *Hay*, (22 Wall., 245,) *Railroad Co.* v. *Swasey*, (23 Wall., 409,) *Sage* v. *Railroad Co.*, (93 U. S., 419,) *Memphis* v. *Brown*, (94 U. S., 716,) *Trustees* v. *Greenough*, (105 U. S., 531,) *Savannah* v. *Jessup*, (106 U. S., 565.)

It is not necessary that a decree should be *final*, in the strict technical sense of the word, as has been often held, to give a right of appeal. If a particular decree *determines and fixes the rights of the parties in respect to its subject-matter*, it is *final*, in the sense necessary to authorize an appeal.

In *Thomson* v. *Dean*, (7 Wall., 345,) the objection made

to this appeal, that no decree which does not *completely dispose of the whole case* is final, is fully answered by the late Chief Justice, who said that, "so far as the court below was concerned, the decree determined the principal matter in controversy between the parties; and since the decree could not be changed, except through a new and distinct proceeding, it determined that matter finally."

The principle applicable here has been recently stated by Mr. Justice Bradley substantially in the same way, as we have seen in the case of *Trustees* v. *Greenough*, (105 U. S., 531,) where he said, speaking of orders like these making allowances to parties in a suit in regard to trust property, "though incidental to the cause, the inquiry was a *collateral one, having a distinct and independent character*, and received a *final decision*. The proceedings may be regarded as so far independent as to make the decision substantially a final decree for the purpose of an appeal."

So, in this case, by the decrees of May, 1880, upon the claims submitted by the receivers for compensation and expenses, the court below disposed completely of the controversy, and of the questions presented as to the allowances to those parties; and the orders constituted, in every essential sense, a judicial determination of the validity and amounts of the claims. (*Savannah* v. *Jessup*, 106 U. S., 565.)

The claimants were entitled to have that adjudication carried immediately into execution, by the payment by the purchasers of the amounts of the allowances, under the penalty of losing the property purchased; and nothing was left for the purchasers but the right of appeal to this court.

The decrees were decisive of the matters involved. They left no question of right between the parties open for future adjudication. They could not be changed except through a new and distinct proceeding, and by them the

appellants were obliged to stand until so set aside, or until they should be reversed on appeal. There is clearly no want of finality in these decrees.

4. The counsel for the appellees has referred, in his printed briefs, irregularly, we apprehend, to certain orders which he states were passed in the court below subsequently to the decrees appealed from, but which are not contained in the transcript certified to this court upon the present appeal.

Among those orders the learned counsel thinks he finds the "final" decree in this cause, from which alone an appeal could be taken by these appellants.

It is manifest that those orders must have been, and, if they can be looked at, outside of the record, it will be found that they were, simply orders in relation to the accounts of the receivers, which, though they may have been in further execution of the decree of sale, it is not perceived the appellants could prevent, after the rendition of the decrees from which they have appealed.

THIRD.

The proposition, on the part of the appellees, that the appellants, Williams & Thomson, have not shown any sufficient right to oppose and question the decrees of May 7 and May 17, 1880, and are incompetent to appeal therefrom, is equally untenable.

1. It is clear not only that those parties were *affected* by the decrees, but also that they were technically *parties to the decrees*, and that they must, therefore, be entitled to appeal therefrom to this court. They stand before the court as parties to the decrees, and as the *only* parties affected by the decrees, and they have the right, therefore, to the protection of this court.

No other parties were affected by the orders of the court

below in respect to these allowances, and none besides these appellants *can* be affected by an affirmance of those orders by this court.

Under and by force of those orders they were *compelled* to pay, and *did* pay, a much larger sum of money, as they claim, on account of the charges against the property, than they were legally bound to pay; and it is *their* right, therefore, to ask that the wrong be remedied by this court.

The learned counsel for the appellees expressly concedes, in his brief, that the "committee" of the bondholders, under the purchasing agreement of February 10, 1880, "*might have made a contest upon the preferential charges, but did not.*"

If that be so, there can be no doubt that the "*purchasers*," under that agreement, who were, in equity, invested with all the rights of the committee and their constituent bondholders, in respect to the preferential charges, including the right to protect the property against the allowance, by the court, of unreasonable and unjust claims for services and expenses, had the right to make the contest they did before the court below, in respect to the claims presented to the master, and have the right now to make a contest, in this forum, against those claims.

It cannot be maintained that the "committee," or the bondholders, or both of them together, had any right to agree with these trustees that they might take out of this property as much as they chose to demand, and that "the purchasers" were to be bound, hand and foot, by any and every such agreement.

No such combination between the "committee," and the bondholders, and the trustees, in the interest of the trustees, could be allowed to bind these appellants or affect their interests in a court of justice.

The appellants, under the purchasing agreement, *stepped into the shoes* of the bondholders, and their committee, and

all the rights and equities of the latter in respect to the preferential charges and allowances, for the payment of which the decree of sale provided, passed by that agreement to the appellants, who were thereafter clothed with the indefeasible right to intervene, as they did, for their own protection against any unjust claims that might be set up by the trustees.

After the Purchasing Agreement and the decree of sale, the claims on the part of the trustees for services and expenses were to be adjudicated, *as between them and the appellants*, according to the same equitable principles in respect to the administration of *trust property* that would have been applicable between *the trustees and the bondholders* if no purchasing agreement had ever been made, and the appellants had the right to demand the application of those principles, by the court below, in the settlement of all questions as to the receiver's allowance, contemplated by the decree of sale.

The appellants neither abandoned nor waived any right as to those allowances originally belonging to the bondholders, and the appellees were entitled only to such compensation as against the appellants, in the settlement of the trust estate, as they were entitled to receive as against the bondholders whom they represented.

The theory, apparently, advanced in the argument for the appellees, that, after and under the purchasing agreement and the decree of sale, the appellees were entitled to treat the property, in their dealings with the appellants and the court, as a *derelict wreck*, is consonant neither with law nor morality.

2. The appellants, as has been said, were not only affected injuriously by the orders or decrees appealed from, but they are to be deemed *parties* to those decrees upon the record.

The decrees were rendered not only *after* the appellants, as the "purchasers" named in the purchasing agreement

of February 10, 1880, had intervened, by petition, in the proceedings for the settlement of the preferential charges and allowances, and become parties to those proceedings, but *after* they had become the real bidders and purchasers at the sale, on April 24, 1880, and all their rights, under the agreement, and the decree of sale, which expressly referred to and recognized that agreement, had fully attached to the property.

The decrees determined how much *money they* were bound to pay for the property, under the 7th article of the decree of sale, by virtue of the bid that had been made, under the purchasing agreement, by the "committee."

The decrees, under that agreement, as recognized by the court, in the decree of sale, bound them as parties who had become, through the bid of the "committee," the substantial, or, as we have denominated them, the real purchasers of the property.

Before the orders appealed from were made, they had asked leave to intervene, for the protection of their rights, in the collateral and independent proceedings, for the ascertainment of the charges against the property, and they had been granted such leave, by the court, and they had actually intervened, in those proceedings, and, before those orders were entered, they had become the equitable *purchasers* upon the record; and the appellants, under the doctrine of this court in *Blossom v. Railroad Co.*, (1 Wall., 656,) and *Minnesota Co. v. St. Paul Co.*, (3 Wall., 624,) were, therefore, at the time of the entry of those orders, *parties to the proceedings* in which the orders were passed, and, as such, parties to the *orders or decrees* themselves.

In the case last cited, Mr. Justice Miller said:

"Pratt and White are mere nominal parties, who were the agents and attorneys of the corporations composing the Milwaukee & St. Paul Railway Company, and purchased the property, at the marshal's sale, for them. *They and the company may both be considered as purchasers at that sale.*"

So, under the Purchasing Agreement, in this case, as recognized by the court, in the decree of sale of the 5th of March, 1880, entered in pursuance of that agreement, the appellants having intervened in the proceedings, are to be considered *purchasers* at the sale under that decree, and, as such, parties to the orders subsequently made, which determined the liabilities, under the decree of sale, of the purchasers of the property in respect to the preferential charges and allowances.

Having thus become, before the orders of May, 1880, not only parties to the procedings in reference to the charges and expenses, but also parties to the *purchase* of the road, they are *parties* to those *orders*, and, as such, entitled to appeal from them to this court.

The rule is settled, by this court, that persons not originally parties to a suit or independent proceedings in a suit, but have an *interest* in the suit or such procedings, may intervene therein, and become parties, for the protection of their interests; and, when made parties by the order of the court to that effect, or by being treated or recognized as parties in the proceedings, they have the rights of parties to the cause.

Sage *v.* R. R. Co., 93 U. S., 419.
Ex-parte Cutting, 94 U. S., 20, 21.
Ex-parte Cockroft, 104 U. S., 578.

In *ex-parte Cutting* (supra) the court say: "While it is not necessary for him to show that he has actually been admitted, by an express order entered upon the record, he must, at least, make it appear that he has *acted* or has been *treated* as a party."

In the present case, the appellants, after intervening and appearing in the proceedings before the master, as has been seen, presented their petition to the court below, on

the 23d of April, 1880, setting up their interest, under the purchasing agreement, to oppose the charges and allowances, claimed before the master, and praying the court that "they may be heard before the master and the court to assert, maintain, and defend such rights as they have or may have, and for the order of the court accordingly." (Rec., pp. 611, 612.)

The court below granted the application, and ordered that the petitioners be heard as prayed. (Ibid.)

By the order of the court, the appellants became parties to the proceedings for the settlement of the preferential charges and allowances, and, therefore, parties to the orders or decrees of the court, in those proceedings, in reference to those charges and allowances; and were thus entitled to all the rights of parties in respect to those orders or decrees, one of which was the right to appeal therefrom to this court.

3. The legal effect and operation of the Purchasing Agreement of February 10, 1880, under which the decree of sale of March 5, 1880, was entered, were (as we have submitted,) to constitute the appellants, Williams & Thomson, named as the "*purchasers*," in that Agreement, the assignees, in equity, of the rights of the committee and the bondholders, in respect to the subject-matter of the proceedings, for the settlement of the preferential charges and the allowances, in the cause, and that interest of the appellants in those charges and in the allowances, under the Purchasing Agreement, was distinctly recognized by the decree of sale.

Under the decree of sale of March 5, 1880, therefore, the appellants were vested with an ascertained *interest*, in that subject-matter, which gave them a legal *right* to intervene, as they did, in the proceedings before the master, and to oppose before him and in the court below, the claims made by the receivers and counsel.

It was not necessary, therefore, under the decree of sale, for the court below to make any *express* order allowing the appellants to intervene and oppose the proceedings on the part of the appellees.

The interest of the appellants, under the Purchasing Agreement and the decree of sale, in the subject-matter to be adjudicated, by the Court, *entitled* them, without any such express order, to oppose the claims and demands made by the trustees before the master.

That the decree of sale, of March 5, 1880, referred to and recognized the previous Purchasing Agreement, has appeared from what has been said in regard to it.

The 7th article of the decree expressly provided for the purchase of this property by the committee of the bondholders, under and subject to the terms of such a Purchasing Agreement as they might have *previously* made, to be filed in the master's office, five days, at least, before the day of sale.

The agreement of February 10, 1880, was so filed in the cause; and the decree of sale, therefore, recognized and confirmed the provisions of the Agreement, which became in effect, after it was filed, in the master's office, *part and parcel* of the decree itself.

In order to determine, therefore, the *interest* of Williams & Thomson, in the subject of the preferential charges, costs, and allowances, in the suit, and their *rights* in respect to that matter, under the decree of sale, it is necessary and proper to resort to the Purchasing Agreement; for whatever interest and whatever rights they possessed in respect to that subject-matter, under the terms of the *Agreement*, were explicitly recognized and confirmed by the decree of sale.

Now it is clear that Williams & Thomson, under the Purchasing Agreement, were vested with all the rights and

equities of the bondholders, who subscribed that Agreement in respect to the preferential charges and allowances, and their just ascertainment and determination, by the court, under the decree of sale.

They were, in other words, the assignees, in equity, of the rights of the bondholders in respect to that subject-matter, and *entitled as such to stand absolutely in their shoes, in the proceedings, in this suit, for its determination.*

The object of the Purchasing Agreement was to enable the bondholders to realize their interest in the mortgaged property, by its purchase, by their agents, for the benefit of Williams & Thomson, who assumed the payment of the charges, expenses, and allowances, in the foreclosure suit, the amounts of which were to be *judicially* ascertained, unless fixed by agreement of the parties.

The Agreement expressly provided, in its 8th article, as we have seen, that "the certificates and liabilities and lawful fees, charges, and expenses of the receivers and trustees, and the disbursements of the committee, including all the expenses and charges of the foreclosure," which were to be paid in cash by the appellants, were "TO BE DECREED BY THE COURT," unless fixed by agreement.

(See Agreement, Rec. p. 583.)

This meant that those expenses, &c., and their amounts, should be *judicially* ascertained and determined by the court, in the due course of law, between the parties presenting the claims for allowance and the parties who were under an obligation to pay them, and were, therefore, alone interested in their just determination.

No other construction can be placed upon the Agreement; and no other effect can be given to it.

The Agreement, manifestly, contemplated and provided for Williams & Thomson becoming parties to the proceed-

ings in reference to those claims, with all the rights and equities of the bondholders in respect to them.

The stipulation referred to was, in other words, in effect, an agreement, on the part of the bondholders who were parties to it, that the appellants, Williams & Thomson, should occupy precisely the same position, in the suit, as far as the claims mentioned were concerned, as they (the bondholders) would have occupied if no Purchasing Agreement had been made, and should have, in the suit, all the rights of the bondholders in regard to those claims.

Such an Agreement will have effect, in equity, as an *assignment*, by the bondholders, of all their rights and equities in respect of the matter of the charges and expenses, in the foreclosure suit, including necessarily the right to appear, in that suit, and oppose and contest the claims which should be presented to the master and the court for allowance.

The Purchasing Agreement can have no other effect, in the view of a court of equity.

The appellants, Williams & Thomson, were vested with an equitable interest in the property, under that Agreement, upon its purchase by the committee; and the costs and expenses in the case were charges upon what in equity was their property.

They had, therefore, a right, upon plain equitable principles to protect the property, which was *their* property, against any improper or unjust claims that might be preferred on account of the costs and expenses in the suit; and they were thus necessary parties to the proceedings, in the cause, for the enforcement of any claims against the property on account of those costs and expenses.

II. The Merits of the Case.

First.

The court below erred in entertaining the so-called exceptions taken before it, on the part of the appellees, to the

master's report filed on May 3, 1880, upon the matter of the allowances to the appellees and their counsel, and the exceptions should have been overruled for irregularity and informality.

1. The exceptions on the part of appellees were not taken, or filed, in the first instance before the *master*, who had no opportunity, therefore, to re-examine the subject to which they related, and make such explanations as the case might seem to him to require.

The exceptions for this reason should have been promptly dismissed by the court below.

Story *v.* Livingston, 13 Pet., 366.
Cowdrey *v.* R. R. Co., 1 Woods, 333.
2 Daniells' Chancery, 1304–1306.

2. The so-called exceptions taken before the court by appellees to the master's report were not drawn in accordance with the requirements of correct equity practice, and they should have been for that reason, also, overruled and dismissed by the court below.

The exceptions were as follows:

"The said plaintiffs except to the several conclusions of the master in respect to the allowances made to the trustees and receivers, and to the other parties in the same, and pray the court to set aside the same and to direct reformation thereof. They further except to the allowance to Williams & Thomson to make any appearance before him on this hearing, and to the hearing of their exceptions. They appeal from the conclusions of the master and claim as made."

Record, p. 1170.

The rule is settled that exceptions should show distinctly the grounds of objection to the report, otherwise they may be overruled for generality and uncertainty.

2 Smith's Chancery, 372.
Story *v.* Livingston, 13 Pet., 366.

The court in *Story* v. *Livingston* said:

"Exceptions to the report of a master must state, article by article, those parts of the report which are intended to be excepted to. Exceptions to reports of Masters in Chancery are in the nature of a special demurrer, and the party objecting must point out the error, otherwise the part not excepted to will be taken as admitted."

The exceptions of the appellees were not formulated in accordance with these principles.

They object "to the several conclusions of the master in respect to the allowances made to the trustees, and to the other parties in the same."

The conclusions of the master, to which objection is intended to be taken, are not stated in the exceptions; nor are the *grounds* of objection to any conclusion of the master stated; nor are the parties designated as "*the other parties*," on whose behalf exception is intended to be taken, named in the exceptions.

The exceptions should have indicated what particular conclusions of the master were objected to, and the grounds of such objection; and so far as "the other parties" were concerned, the exceptions should have *named* them, and informed the court what the conclusions of the master were in respect to their claims, what objections existed to those conclusions, and the grounds of such objections.

The exceptions were, therefore, clearly void for generality and uncertainty.

3. If by "*the other parties*," in the exceptions, reference was intended to be made to the New Orleans and the New York counsel, to whom allowances were made by the master, no exception could properly lie to the report of the master in respect to the allowances to them, or the allowance to either of them.

The master allowed all that was claimed, before him, on behalf of the respective counsel in the cause; and it did

not lie in the mouths of the appellees to object to the awards made to the counsel.

SECOND.

The court below erred in not confirming the master's report, filed May 3, 1880, in respect to the allowances to the appellees and the counsel, upon the ground that the questions as to those allowances properly belonged to the masters's office, and that it was manifest that the master had made no such mistake as would justify the court in ordering a reformation of his report, upon the principles applicable to the master's office.

1. It is settled that a Court of Chancery will not disturb a master's report upon such a matter unless reasons exist for its reformation as strong as would justify a court of law in setting aside the verdict of a jury. All presumptions are in favor of his report as to matters of facts. It is like the verdict of a jury. It must appear that the master made a clear mistake, or was guilty of a palpable abuse of power, to justify the court in disregarding it, and setting it aside.

The burden, upon the present appeal, is on the appellees to show clearly that the master made a palpable mistake in the matter of these allowances. Every presumption, in this court, is in favor of the master's report as to that matter.

2. That we have correctly stated the rules which should have been applied, but which were violated, by the court below, in passing upon the exceptions filed by appellees to the master's report, will appear by a reference to a few authorities upon the subject.

In *Cordrey* v. *R. R. Co.* (1 Woods, 341) Mr. Justice Bradley said:

"The question of allowance to the receiver for his services is one that properly belongs to the master's office, and

not to the court. In this case especially, the great knowledge possessed by the master with regard to the business habits and compensation for business and professional services in this community would have rendered a decision by him peculiarly valuable."

And, in that case, it was only on the express desire of the parties that the matter should be decided by the court, and under the order of another justice, making it an open question, that the matter was considered by the Circuit Court in the absence of the master's report.

Mr. Justice Woodbury, in *Webb* v. *Powers*, (2 W. & M., 511,) said:

"The office of a master in chancery is somewhat like that of a jury in the courts of common law. When they have decided on the facts, and no legal question is involved in them, their report should stand unless reasons exist for a change as strong as will justify setting aside a verdict. If there has been a clear mistake, or a palpable abuse of power, either of them ought to be corrected. But if the court should inquire beyond that, as to matters of fact, the office of a master would prove but little aid in the administration of justice."

Mason *v.* Crosby, 3 W. & M., 269.

Judge Story, in *Donnell* v. *Ins. Co.*, (2 Sumner, 371,) said:

"The report of the auditors is in the nature of a report of a master in a suit in chancery. The court will not wander at large into the evidence in order to ascertain whether by possibility the master was wrong in his conclusion or not. If it be a matter of fair doubt, or a conclusion upon evidence, in its own nature, ambiguous and uncertain, upon which different persons, equally impartial and intelligent, might entertain different conclusions; there the court will not substitute itself for the judgment of a jury, even though it might not, perhaps, have originally arrived at exactly the same conclusion. It is sufficient for the court to abstain from any decision as to a matter of fact if it is not clearly satisfied that there has been *unquestionable error*."

See also Knox *v.* Walton, 2 W. C. C., 507.

Dexter *v.* Arnold, 2 Sum., 108.

These principles have the sanction of decisions of this court.

Harding *v.* Handy, 11 Wh., 126.
Foster *v.* Goddard, 1 Bl., 2, 510.

And of other courts of authority.

Izard *v.* Bodine, 1 Stockt., (N. J.,) 309.
Merriam *v.* Baxter, 14 Vt., 514.
Mengas' Appeal, 7 Harris, 221.
Holcomb *v.* Holcomb, 3 Stockt., 281.
Smalley *v.* Corliss, 37 Vt., 486.

3. It is manifest, upon the face of the master's report of May 3, 1880, that he committed no such error or mistake as justified the court below, under the principles above declared, in setting it aside and ordering its reformation, and that it was the duty of the court to confirm his report as to the allowances for services and counsel fees.

The master considered what was fit and proper to be allowed, having regard to what had been already paid, the decree of difficulty and responsibility, involved in the situation, and to the customary allowances in receivers' cases, and upon ample evidence, and after full hearing, made his awards in a spirit of great liberality to the parties claiming before him, and his determination should have been held conclusive by the court.

Under these circumstances the decree of the court below, sustaining the so-called exceptions on the part of the appellees, and directing a reformation of the trustee's report, will be reversed by this court.

THIRD.

The evidence before the master and the court below showed that the allowance to the receivers at the rate of $5,000 a year from March 12, 1875, in addition to the annual salary of $13,000 drawn by Mr. Raynor, after the

order of the learned Circuit Judge of December 10, 1875, would have afforded an exceedingly full and liberal compensation for all their services, and the report of the master, upon that evidence, in the absence of exceptions on the part of the appellants, should have been confirmed by the court below.

1. The order of His Honor, Mr. Justice Woods, in fixing the compensation of Mr. Raynor at $10,000 a year for all the work to be done would appear to be a fair and liberal appropriation consistent with the ordinary standard of compensation in such cases. By that order, indeed, the matter of the Receiver's allowances, in this case, became RES ADJUDICATA. Its liberality was apparently appreciated by His Honor at the time because the order was discreetly directed by him to be filed for exceptions. In some manner, not appearing upon the record, the order for $10,000 a year and necessary expenses not exceeding $2,500 additional, became treated as an allowance of an annual salary of $13,000 which was drawn by Mr. Raynor.

The appropriation of the whole compensation by Mr. Raynor must have been by arrangement with Mr. Morgan, became the application was made and the order entered by the solicitor for both of them. The arrangement between them, no doubt, was upon the basis that Mr. Raynor should do all the work.

This annual pay of $13,000 was full and liberal in comparison with the precedents referred to in the record.

The road was a short line of one hundred and forty miles length. The gross earnings were less than $650,000 a year, (fol. 937.) and the net earnings, without payment of any interest upon even the first mortgage bonds, were all required, and $700,000 of receivers' certificates besides, to put and keep in good order the road which was constructed under the presidency of Mr. Raynor, and completed as a new road, and with everything new about it, only four years before.

2. Among the instances of receivers' allowances shown in the record, are as follows:

Mobile & Montgomery Railroad, 180 miles long. Three trustees for 16 months, $10,000 allowed among them. (Rec., p. 1167.)

Vicksburg, Shreveport & Texas Railroad, 73 miles long. Receiver allowed $6,000 a year. (Rec., p. 1131.)

Montgomery & Eufaula Railroad, 80 miles long. Receiver allowed $6,000 a year. (Rec., p. 1133.)

Mobile & Ohio Railroad, 490 miles long. Two receivers allowed $24,000 per annum between them. (*Ibid.*)

Galveston, Houston & Henderson Railroad, 52 miles long, but with receipts equal to the New Orleans & Mobile, $10,000 a year. (Rec., p. 1164.)

Chicago & Alton Railroad, $3,000 per annum to each trustee. (Rec., p. 1164.)

Iowa Central Railroad, $3,000 a year to receiver, $10,000 asked for, $4,000 allowed. (Rec., p. 1166.)

Missouri Pacific Railroad, $5,000 a year. (*Ibid.*)

Missouri, Kansas & Texas Railroad, between 600 and 700 miles long, $10,000 or $15,000 a year. (*Ibid.*)

Illinois and St. Louis bridge. Two trustees operated the property as receivers from 1875 to 1879. Allowed $10,000 a year between them. (Rec., p. 1168.)

New York Elevated Railroad. Trustee in possession 9 or 10 months, giving his whole time exclusively, allowed $10,000. (Rec., p. 1167.)

Toledo, Peoria and Warsaw Railroad, 237 miles long. Trustees in possession one year, allowed $4,000 each. (Rec., p. 1163.)

3. The rules for the compensation of receivers of railway and other property, have been frequently discussed by the courts; but tested by any rule that has ever been

applied, or conceived to be applicable, in this class of cases, the allowances here were exorbitant and excessive.

Grant *v.* Bryant, 101 Mass., 570.
Jones *v.* Keen, 115 Mass., 181.
French *v.* Gifford, 31 Iowa, 428.
Cowdrey *v.* R. R. Co., 1 Woods, 331.

In the case last cited, Mr. Justice Bradley, where the receiver was obliged to give up his business when he assumed the duties of the receivership, considered an allowance of $15,000 a year excessive, and fixed the compensation at the sum of $10,000 a year.

FOURTH.

The allowances made to the appellees by the decree of May 7, 1880, and the confirmatory order of May 17, 1880, were unsupported by any evidence before the master and the court, and are manifestly excessive, unwarranted, and illegal.

1. As to Mr. Raynor and his services, there is nothing disclosed by the evidence which justified the court in adding to the sum of $66,548.83, already drawn by him from the trust fund, the further amount of $79,083.23, and giving him $145,632 for 5 years services.

His time was about equally divided between the service of the receivership and his private business affairs. He was in New Orleans only half of his time. (Rec., p. 623.) The road had its full complement of professional managers and operators. Mr. Robinson was superintendent, Mr. Howell was treasurer, Mr. Stevenson was auditor. (Rec., p. 625.)

There is no evidence indicating that his services were any other than of an ordinary character of management and supervision such as would naturally pertain to the presidency of a railroad company.

When the receivers took possession in February, 1875, the road was comparatively a new one, having been finished by the company only four years before, under Mr. Raynor's presidency.

It certainly would be unfit that Mr. Raynor should obtain such a large sum of money out of the fund based upon any depreciated condition of the road so recently constructed under his own presidency. (Rec., pp. 85, 90.)

Nor could it be accounted to Mr. Raynor as any special merit that a road one hundred and forty-one miles long, even if in bad condition in 1875, should be in good condition in 1880, when no earnings of the road were paid even to bondholders as interest during the intervening period, and when, in addition to the expenditure upon the road of its full earnings, a debt was contracted upon receivers' certificates of seven hundred thousand dollars, and even these certificates were negotiated at a discount, which would make the rate of interest fifteen per cent. per annum, (Rec., pp. 308, 625,) and afterwards twelve per cent. per annum, payable monthly.

The great part of these certificates were negotiated by the receivers at those rates to themselves individually. (Rec., pp. 335, 625.)

A computation based upon statements in the record would show that the surplus interest over and above the rate of four per cent. per annum upon the receivers' certificates would make a profit to each of them of about fifty thousand dollars, thus adding to the one hundred and ninety-eight thousand three hundred and fifty-four 20-100 dollars received as fees by Messrs. Morgan and Raynor, an additional sum sufficient to make the amount of profit to them from the control of the road nearly three hundred thousand dollars. (Rec., pp. 121, 334.) By order of court these certificates were offered to the bondholders pro rata, but the others, who had not possession of the road as security, declined to advance the money.

When they were benefited by these large profits for advancing money to themselves, with the whole property in their hands as an absolute security, we find in their balance sheet (Rec., pp. 575, 578) they had $145,675.12 of the borrowed money lying on deposit.

2. As to Mr. Morgan, the record shows that he performed no actual duties, and the order assigning the salary to Mr. Raynor as the acting receiver and trustee shows, as has been said, that no duties were intended or expected from him.

Mr. Howell says that he wrote to Mr. Morgan, but it would be difficult to imagine what advisory function even he could perform in respect to a road of this length, in charge of an active trustee and receiver, a general superintendent, a treasurer, and an auditor, with their ordinary corps of assistants.

FIFTH.

The court below was not justified in increasing, by the decrees appealed from, the allowance awarded to the New Orleans counsel of the appellants by the master in his report of May 3, 1880.

The master based his allowance to counsel upon the claim of $20,000 as made before him, in full for the services indicated in the account presented on April 3, 1880, (Rec., p. 620,) and the absence of objection at the final hearing on the part of the appellees.

See the Report, Record, p. 614.

No other amount was claimed before the master, and it would seem that this matter should have been left by the court as it was settled in the master's office.

SIXTH.

It is respectfully submitted, for these reasons, that the decrees appealed from should be reversed, with directions

to the Court below to enter a decree as to the allowances to the appellees and counsel in conformity with the master's report of May 3, 1880, and such other orders or decrees as may be necessary in the premises.

J. HUBLEY ASHTON,
JAMES THOMSON,
Of Counsel for Appellants.

Supreme Court of the U. S.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON,
APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR,
APPELLEES.

Appeal from the Circuit Court of the United States in New Orleans.

JOHN A. CAMPBELL,
For Appellees.

JOHN MURPHY & CO., PRINTERS AND STATIONERS, BALTIMORE.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON,
APPELLANTS.

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR,
APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES IN NEW ORLEANS.

STATEMENT OF THE CASE.

The appellees, Morgan and Raynor, as trustees, commenced a suit in March, 1875, to enforce the trusts of a deed executed by the New Orleans, Mobile and Chattanooga Railroad Company, which afterward became the New Orleans, Mobile and Texas Railroad Company. The property included in the conveyance is the railroad and all other property and rights of the corporation within and between the cities of New Orleans and Mobile. The mortgage debt consisted of an issue of four thousand bonds of $1,000

each, with coupons, payable semi-annually, of forty dollars each, in January and July of every year.

There was a continuing default from July, 1874, till the sale of the property in April, 1880, under the decree of the Circuit Court. The trustees entered in January, 1875, and were appointed receivers and prosecuted the suit against the corporation and the trustees of two junior mortgages and a corporation which had possession, having the same name. None of the parties to the suit, none of the owners or holders of bonds described in the deed of trust contest the validity of the deed of trust, the default of the corporations as debtors, the title of the trustees, the necessity for a sale of the property, nor the regularity of any order of the Court; nor of any action of the trustees or receivers from their entry into possession of the property in 1875 till their separation from it by the surrender under the order of the Court after the sale and settlement in May, 1880. The decree of sale was made the 5th of March, 1880. This decree provided for the conclusion of the cause by directing the sale, the application of the proceeds, the transfer of the property and the liquidation of the accounts of the trustees. Record, p. 569, Supplemental Record, filed with the motion, p. 3. The master was empowered to make inquiries of claims, charges and compensation for service to speed the settlement. Record, p. 574. The purchasing agreement was filed for exhibition. Record, pp. 579-586. Copies are found in the Record, pp. 1197-1203, also in Supplemental Record, pp. 40-49. The sale was duly advertised for and made on the 24th of April, 1880. It was reported the 5th of May, 1880, and confirmed the 7th of May. Record, p. 1233. The price was paid the 13th of May by the purchasing committee, George Bliss, L. von Hoffman and Oliver Ames, to the trustees. Record, pp. 1171-2-3, Supplemental Record, pp. 15-27.

The citations of supplemental record is from a record furnished by the clerk and filed as part of a motion to dismiss, heretofore submitted and with the briefs.

II.

This statement of what was not contested brings us to disclose the matter of this controversy. The sole matter is the contest of the allowances to Edwin D. Morgan and James A. Raynor, and to their solicitor as compensation for service; David Thomson and William S. Williams are contestants. No other parties are upon this record as appellants in this appeal or as concerned in this contest.

III.

The sixth and seventh sections of the decree of March, 1880, direct the sale to be made by the trustees, under the supervision of the master. They allow the bondholders to make a purchasing agreement among themselves, and to have a committee, and gives to them twenty days after the sale to perfect their own arrangements for payment, and to obtain possession of the property. The decree recognizes all the authority of the trustees under the deed to make the sale, to receive the money, to distribute it, and to bid at the sale, as conferred in the deed of trust. The master only superintended the sale so the decree might be carried out. The seventh section of the decree orders: "No more money shall be required on the day of sale than shall be sufficient in the opinion of the master and trustees, to assure the payment of the charges and privileges upon the fund, as shown by this decree—the amount to be ascertained by the master's report before mentioned; and also the charges including those arising under the orders of the Court before mentioned, and defined in the first article of the deed of trust, consisting of expenses of management, conduct of business, repairs, replacements, incidental charges of administration, compensation for service, for which there is not adequate provision

for payment from the moneys on hand, and these charges the master must ascertain and give notice at the day of sale."

This section provides that the whole sum might be demanded of any other purchaser than the committee of bondholders. It provides "that the trustees should not surrender possession until all the conditions of the decree were fully complied with." These conditions are repetitions of the deed of trust. Record, p. 573. Supplemental Record, pp. 7, 8. For deed of trust, see Record, p. 36, art. 3, fo. 90. The advertisements were made, the purchaser's agreement was filed with the master, when on 29th of March it was deemed proper for the master to comply with the decree, so that persons might know what money was to be paid on the day of sale.

The certificates issued by the trustees had been reported by the master to the Court. Record, pp. 503, 507. The fifth section of the decree confirms the report, and the purchasing agreement adopts them as a preferred debt to be paid. So also in respect to the costs and expenses of the suit. Record, p. 570.

IV.

On the 29th of March with *the authority of the trustees, and of the purchasing committee,* (the letter of the committee was filed) the solicitor of the plaintiffs "submits to the master a statement of the amount of charges to be paid *by the purchasers at the sale of the property* of the defendants on the 24th day of April, 1880, under the decrees of sale and the advertisements." He was "instructed to submit the charges hereinafter stated and has been empowered by the committee of bondholders to act in their behalf." Of course it was quite impossible that anything arising on the conclusion of the trustees and master, under this decree or the advertisements, could be intended to affect the other parties to the cause, except in so far as to determine that a portion of the bid of the purchasing committee, which could be demanded at the sale in cash for the

purpose of "*assuring the payment* of the charges and privileges on the fund, as shown by the decree," to use the language of the decree. Any other purchaser than the committee was unaffected, for the same section of the decree directs that "In the event that the property be purchased by any other persons than the committee aforesaid, the price shall be immediately demandable by the trustees or the master for them."

The paper filed at this time and for this purpose with the specifications is found in Record, pp. 617-618. The specifications of the preferential charges to be provided by the cash payment, for which the moneys on hand were inadequate, were, in the first place, the certificates for rebuilding the road, $700,000; compensation for receivers and trustees, (the sum fixed was $25,000 annually); Mr. Parson's fee, $15,000; allowances to the master and cost of the Court, $5,000; another item, for the solicitor, was not included at this date in this statement. Five days after came William S. Williams and David Thomson, parties interested in the purchasing agreement, and, as bondholders, chargeable for allowances sought to be imposed upon them, and oppose the charges and allowances to be made as exorbitant, excessive, illegal. They particularly oppose the seven hundred thousand dollars for certificates as "excessive," "more than was authorized" or necessary for the work done.

This *trinal* "exorbitant, excessive and illegal," is applied to all and to each of the items of the statement from the beginning to the end of this opposition, so called. Record, pp. 618-619. A few days after this, these same parties, having, we suppose, been informed of the decree and of their own agreement acknowledging the validity of the certificates, *withdrew* the counterblast against them and reserved their epithets for the remaining items. Record, p. 629.

The plaintiffs denied the capacity of these persons to make this opposition for want of interest or connection with the subject, and moved for the dismissal of the opposition of Williams and Thomson with specifications. Record, p. 630.

the claims made on my part for them. Also I withdraw the claim preferred by me on my own part as a parcel of the plan I presented.

JOHN A. CAMPBELL,
Solicitor.

April 20, 1880.

Withdrawal prayed for allowed. Record, pp. 631, 632.

SIGNED BY THE MASTER.

On the 23d of April, 1880, William S. Williams separately presented a petition to the Circuit Court for leave to go before the master to be allowed to join with *William T. Thomson* (sic) in the support of his exception, which he approves, and that he may defend his own rights and all he may have. In this paper he represents that he holds first mortgage bonds for the sum of $582,000 and he represents other bonds, as appears by his signature on the purchaser's agreement, filed herein, and interested therefor. He claims also as a trustee of the second mortgage. Record, pp. 610, 611.

On the same day the firm of Williams and Thomson made known to the Circuit Court by petition their relations to this cause under a purchasing agreement, a copy of which is annexed, and had the rights acquired therein as purchasers. They say they have rights under that agreement, and are holders of first mortgage bonds, and also as holders of second mortgage bonds to oppose the allowances and charges referred to the master. They pray to be heard before the master.

The Court directed these petitions of the parties to be filed, and that the petitioners be heard, as prayed for. Record, pp. 610, 611.

The printed record does not contain a continuous statement of the details of this proceeding, and the import of the several events are to be collected from papers which do not follow in regular order. The master in his report states the filing of papers, and

refers to the contents, but some are not stated, so as exactly to determine the import and aim of the party.

The matter submitted on the 29th of March was to ascertain the amount of money to be paid in cash at the sale under the condition of the seventh section of the decree. The paper submitted the 20th was designed to prepare the case for the final action of the Court upon the settlement of the accounts of the trustees. The sale had not been made at the date of either one of these acts.

On the 23d of April the papers were all submitted to the master. His report commences at Record, p. 613 and ends at 616. The documents filed and the evidence submitted comprise about five hundred and fifty-three pages, pages 617 to 1170, inclusive. Then follow the exceptions and proceedings before the Circuit Court on those. Record, pp. 1170, 1171, 1232, 1236-7-8.

VI.

The order confirming the master's report in respect to the certificates described in the fifth section of the decree; the allowance to John E. Parsons, attorney; F. A. Woolfley, master, and for the cost of court expenses, and directing a reformation of the report in respect to the trustees and solicitor was made on the 7th of May. Record, p. 1232. The reformed report was made the 8th of May, and exceptions were filed on that day by Williams and Thomson. The Court announced its judgments upon these exceptions the 17th of May as follows: "Whereupon and upon consideration thereof, it is ordered that the exceptions be dismissed." Record, p. 1236. The petition of appeal is made on the 21st of May. The bond was filed on the 31st of May, and on that date approved. Record, p. 1238.

The Clerk of the Court in making up his record for this Court makes no return of any proceedings in this cause after the 17th of May, 1880. This is the date of the last order mentioned in the

motion of appeal. The appellees have produced and filed a certified copy of the Record after the allowance of the appeal and till the close of the case on the 24th of June. A large portion is before the bond was filed in the Court but after motion for appeal, and consequently before the appeal was perfected or operative.

VII.

In December, 1882, the appellees filed in this Court a motion to dismiss the appeal allowed in the Circuit Court to the orders aforesaid, for the reason that under the conditions of the cause in Court they were special orders and not final decrees; that they were interlocutory orders, preparatory for and introductory to the final hearing and orders in the cause, and which could not be intelligently examined otherwise there in a relation to all of the proceedings in the cause. The Clerk of the Court certifies in October of 1880, that he had made up a full, perfect and complete record, and his certificate is misleading and untrue. For what we have filed with the motion belongs to the Record, as he certifies of the said No. 7357.

I.

The motion submitted is: that the firm of Thomson and Williams, as a firm have not shown any title whatsoever to intervene in the inquiries directed by the decrees and orders of the Circuit Court, relative to the charges upon the proceeds of the sale or as to the amount thereof, or to participate in the distribution, or to take any appeal from the order of the Circuit Court.

2. That William S. Williams, as trustee of the second mortgage, had no interest as trustee of the second mortgage in the price paid to the trustees for distribution among the creditors secured by the deed of trust. The deed of trust was not satisfied, and there was

no SURPLUS for trustee or for bondholder deriving title under the second mortgage.

3. The record contains no proof that either Williams or Thomson held first mortgage or second mortgage bonds at the date of this intervention, before the master or appearance before the Court. The purchasing committee produced to the trustees, and surrendered to them three thousand, eight hundred and sixty-eight bonds and their coupons, and accepted full payment of all that they claimed to be due. They did not except to a single item of charge, nor did any one else. Neither Thomson nor Williams, nor did either of them, oppose the account. They are reported as having claimed of the purchasing committee the assignment of their *bid* to the new corporation organized to take title from the committee. Supplementary Record, pp. 24, 25, 27.

4. The record does not show that the appeal was made from a final decree. The reformed report was filed, and these persons filed exceptions, which were *dismissed*, not *overruled*, and leaving the report in the master's office open to exception there at any time before the final hearing of the cause.

5. The final decree in the cause was rendered the first of June, and closed the cause as to all matters in issue among the parties.

REMARKS UPON THE MATTERS OF LAW AND OF FACT IN THE SUIT No. 90.

I.

The decree of the Circuit Court of the fifth of March, 1880, was a final decree which established the deed of trust of the plaintiffs, Morgan and Raynor, the validity and operation of the deed over all the franchises and property of the railroad corporation described to secure four thousand bonds of $1000 each, with coupons of forty dollars each, for semi-annual interest, the default of the corpora-

tion, and the amount of the debt, and the propriety of a sale under this decree. The debt ascertained by the decree was composed of four millions of dollars as principal of the bonds issued. Overdue coupons increased the bonded debt to $6,307,784; there was a debt which was superior in privilege for the sum of $700,000 for ameliorations and reconstruction, and an unliquidated debt for management, custody, services rendered, expenses of suit, fees and liabilities arising from administration; the debt as liquidated was finally $7,193,939.88. Record filed with motion, p. 16. This entire debt was undisputed, except $117,736. This dispute is confined to the appellants, and their appeal draws into controversy two orders of the Circuit Court.

II.

The directions of the decree, in respect to advertisements of sale, the persons to conduct it, the payment of the price should a committee of bondholders purchase at the sale; the directions as to reports to the Court, the orders to confirm them; to place the purchasers into possession, the withdrawal and discharge of receivers and trustees, and the final settlement of the administration by a final decree or order, was the aim and purpose of the decree thus entered. The various orders from time to time were framed so as effectually to close this administration, and to transfer the property, and were severally in their nature, administrative and interlocutory and alterable during the term. *Judex ab interlocutorio discedere potest.*

III.

The final decree rendered in March empowered the master to inquire of facts needful to put the case before the Court, or that might expedite the trustees in carrying forward the sale of the

property, and the settlement between the trustees and creditors. One inquiry to be made by the trustees and the master was, how much money should be paid on the day of sale by any purchaser, so as to assure the claims the decree had ascertained and liquidated as superior to the bonded debt in privilege, and such claims as were recognized in the decree as superior and not yet liquidated. This was to be done by the trustees upon a consultation with the master before the sale, and for the only purpose of assuring a sufficiency at hand. On the 29th of March, after the advertisements had been commenced, and the purchasing agreement filed in the absence of the trustees, this matter was submitted to the master. A violent opposition was filed afterward by these appellants, and all of the amounts suggested were declared therein to be "exorbitant, excessive and illegal." A trustee having returned, and both being represented, it was agreed to fix a larger sum than the paper had called for, and the proceedings were withdrawn from the master. Another paper was filed in order to present this subject for decision by the Court. On the 20th of April this paper was submitted, on which the reports and the orders were made, which are referred to in the appeal of the appellants to this Court. These appellants obtained leave to go before the master on the 23d of April, 1880, upon their own petitions, which the Court directed to be filed. Record, pp. 610, 611. William S. Williams, on that day, in his petition, expressed a desire as trustee of the second mortgage, to be heard, and that he and his co-trustee would have a title to the *surplus* after the payment of the first mortgage. On the next day the sale was made, and instead of a *surplus*, there was a deficiency of more than $3,000,000.

Williams in his personal interest had stipulated: "*It is underderstood that the sale of the said railroad franchise, equipments and property shall be for the first mortgage bonds and coupons, and that the second mortgage bonds and stock are to be foreclosed and cut off.*" PURCHASING AGREEMENT, *Sec.* 4. Record, p. 580. As Thomson and Williams claim to have had a power to inspire this

bid made at that sale, the absence of a SURPLUS could not have been a surprise to either one of them, but must have been and was a desirable event. We shall see wherefore desirable hereafter.

IV.

The reports made by the trustees and the master show that George Bliss, L. Von Hoffman and Oliver Ames, by their *proxy*, were purchasers at the sale made by the trustees under the decree for $4,000,000. They paid nothing at the time. They being the purchasing committee, were allowed by the decree twenty days to conclude the arrangements of purchase after the sale. The report of the sale was confirmed on the 7th of May, and the purchasers, by the order, were only permitted to have a conveyance or possession until *they* complied with all of the conditions and by payment of the price. On the last of the twenty days (13th of May), the committee, Bliss, Von Hoffman & Co. delivered to Morgan and Raynor, trustees and plaintiffs, three thousand eight hundred and sixty-eight of the first mortgage bonds, with all of the coupons thereon overdue. The coupons and the interest thereon were first received, and there was a credit to be placed on each one of these bonds, of the same sum, all being ratably paid. The whole represented $3,868,000, and were accepted for so much of the bid. The committee paid in money $963,790.06. A balance of $2,106.06 was settled by the committee with the trustees with cash derived from the earnings of the railroad, adjudged as belonging to the purchasers aforesaid since the day of the sale. The sum of four millions of dollars being thus paid, these gentlemen, Bliss & Co., obtained a bond of indemnity for the trustees against contracts, responsibilities and liabilities outstanding, according to the tenth section of the decree of March, 1880. By these performances the trustees were satisfied as to the payments, and Bliss, Von Hoffman & Co. became entitled to a deed for the property and to delivery of full possession and

management. Both vendor and vendee were satisfied by their mutual performance of the contract of sale. The first acts the trustees had to perform were to make the deeds and deliver the possession. Bliss, Von Hoffman & Co. made and delivered to the trustees an assignment to a new corporation, with the name of New Orleans, Mobile and Texas Railroad Company reorganized, of the bid or right to call for the titles and the livery of seisin to the property they had acquired by purchase and compliance with conditions of the decrees and orders of the Court. The deed was made, the possession and transfer of property followed, and whatever was directed by the decrees was done. William S. Williams, as an officer of the new corporation, and D. W. C. Rowland, agent, participated, and their receipts are reported to the Circuit Court, and are sanctioned as indicative of exact fulfilment by Morgan and Raynor of their duties as trustees in respect to the transfer of this property. See Supplemental Record, pp. 3-10.

In looking back to the clamorous interventions of Thomson and Williams, and of William S. Williams, in the Circuit Court previously to this settlement, the inquiry arises, as to the part they took in the interview between Morgan and Raynor, trustees, and Bliss Von Hoffman & Co., purchasers. We are unable to discover that Morgan and Raynor were called upon by Thomson and Williams as "*purchasers*," or that they pretended to be "purchasers" from the trustees, or to be entitled to demand the deeds, or authorized to pay the price to them. These rights and obligations existed alone for Bliss and his associates, and they alone could approach the trustees on this subject. Nor do we find that when three thousand, eight hundred and sixty-eight bonds of the issue under the deed of trust were spread before the trustees, and offered under the seventh section as current coin to pay for this property as described in the decree, and the precise dividend was settled and sanctioned between these vendors and vendees, and the one party, (the trustees,) accepted them for that price, and transferred their estates and rights on that basis, and the other party, (Bliss & Co.,)

delivered them without complaint, reservation, protest or hint of dissatisfaction, do we discover that Thomson and Williams, or Williams, or Thomson, had interposed, and had claimed to be owners of 582 of the bonds, and that the dividend was insufficient or unjust. We do not find either one of them with their packages of first mortgage bonds, or second mortgage bonds, to share in the dividends which were then made. The trustee of the second mortgage did not importune for a SURPLUS. In none of the executive functions performed by the trustees on the day of sale, or at any time after, do we find a single occasion for the trustees to have intercourse with this firm until after they had sold the property and had the price in hand. As *assignees* of Bliss, Von Hoffman & Ames, a new corporation established after the sale in Alabama, through officers and agents called upon the trustees to fulfil obligations they had contracted with their *assignors*, and this was done. Williams was an officer or an agent. The only claim his corporation had was derivative, and defined by this assignment brought from Bliss & Von Hoffman.

VI.

There was delivered to the trustees 3,868 first mortgage bonds, secured by the deed of trust of the plaintiffs, with the overdue coupons upon them. There was an interest of seven per cent., payable on the coupons according to the deed of trust, and this had grown to $404,744.32. Supplemental Record, pp. 1, 2. These coupons were payable alike and before the bonds, and the bonds were to be ratably and equally paid, and this order was exactly followed and the Court approved it. Supplemental Record, p. 3.

There were 132 bonds not presented by the committee or other owner to the trustees, and Bliss, Von Hoffman & Ames paid their ratable share in money as part of the residue of the price, and this sum was, under an order of the Court, deposited in the United

States Trust Company to await their presentation. The last report to the Circuit Court will show only ten not presented and paid. Assuming this as a fact, three thousand, nine hundred and ninety bonds have been settled by the trustees upon the same basis of calculation as that adopted in the settlement with Bliss, Von Hoffman & Co., and approved in the orders of the Court in pp. 1–3; Supplemental Record, pp. 3–10; and are held as vouchers of the reports thus cited, subject to the order of the Court. Supplemental Record, p. 28.

While this distribution of the fund in the Court was rapidly progressing, it does not seem that William S. Williams was at hand with five hundred and eighty-two bonds to obtain his share. It is quite apparent, however, that some of any lot or perhaps all of any lot of 582 must have come to the hands of the trustees. Only 132 were absent, and they remained so during the term of this Court. Nor did he come with his second mortgage for a *surplus*. Nor were Thomson and Williams stirring to find what portion of this fund was due to them under the purchasing agreement. Nor did they file opposition to the reports made of these acts and operations. The report of the trustees to the Circuit Court, of these acts, says:

"The committee consisting of Bliss, Von Hoffman and Ames, who were the purchasers at the sale, owned at the sale 3,868 bonds; there were only 132 which were not owned by them and which have not been presented to the trustees. There is reserved for the payment of these bonds and coupons $78,749, besides a sum of $26,629.18 to be paid on the bonds." Supplemental Record, pp. 3-10.

They further report that this settlement with the purchasers at the sale being satisfactorily made, they received from them an assignment of the bid made by them at the sale, and which has been represented to the Court, and thereupon your petitioners delivered a deed to the New Orleans, Mobile and Texas Railroad Company, as reorganized, conforming to that reported. The assignment made by Bliss, Von Hoffman and Ames, the purchasers

at the sale, is filed with this petition. They further report that "the property sold was delivered to D. W. C. Rowland, in accordance with the order of the President of the Company, attached to the assignment and filed therewith." The person giving this order in favor of Rowland is William S. Williams, who, on this Record is denominated bondholder, trustee, purchaser. These papers show that all of this settlement took place in New York, the 13th of May, 1880. All of these papers were on file in the Circuit Court before any bond for an appeal was filed, and Williams and Williams and Thomson had notice of them. Supplemental Record, p. 3-10.

Were Bliss, Von Hoffman and Ames disposed to contravene this settlement now, it could be done only by an original bill in the the nature of a bill of review. What equity has their assignee, who was immediately connected with the arrangements and with the assignments, and who accepted them, to interpose with any adverse proceedings or contradictory opposition? With what reason can they claim that another sum must be paid on these bonds, and that Williams, as purchaser, bondholder or trustee, should reclaim the identical money he handed to the committee by the explicit terms of the purchasing agreement signed by him, and whereby he was able to obtain the assignment of the bid they had made?

VII.

We might rest upon the evidence furnished by the Record that the claim put forth by this firm of Thomson and Williams and its individual members to intervene on these discussions is untenable, for that they represent no interest in the result of the discussion they have occasioned. As a trustee of a second mortgage, or a holder of second mortgage bonds, their intervention was simply intrusive. As holder of first mortgage bonds, they might have come before the Court. The Record shows that on the reference

to the master to take proofs of the debt and of the names of the creditors, neither of the persons appeared as bondholders. Record, pp. 226-274.

In the report of the master, before whom they were allowed to appear on their own assertion of ownership, we have no statement or exhibition of the bonds they professed to have, and merely referred to some purchasing agreement which they say they had subscribed. But the purchasing agreement on file in the Record contains plenary evidence of authority to Bliss, Von Hoffman and Ames to do with the bonds deposited precisely what was done after the sale. This agreement is filed as part of the Record submitted with the motion, p. 40, and in the Record, pp. 579, 1198.

We extract from that agreement: In the first section "The bondholders further irrevocably empower the committee to act for them, and each of them, in all matters connected with the arrangements herein provided for, and in all dealings with the purchasers (Thomson and Williams) according to the terms hereof, 'with such modifications as may be deemed by the committee necessary and advisable, and which shall be agreed to by the purchasers.'"

The third article provides for the deposit of the bonds with a Trust Company, subject to the order of the committee, for the purposes of this agreement, "and shall be delivered to the committee upon their receipt, or shall be disposed of by the Trust Company, upon the order of the committee."

The ninth section provides: "And the bondholders authorize and empower the committee, for the purposes hereof, *to use all of their said bonds and coupons so deposited*, and agree upon demand made to surrender to the committee the receipts given to them for said bonds and coupons by the Trust Company, and to accept in lieu thereof the receipts of the committee; and the *committee shall have full power and authority to do and perform all acts and things for the carrying out the intention of this agreement, all matters of detail being left to them.*"

The eighth section contains this clause: "THE BONDS AND COUPONS SO DEPOSITED SHALL BE USED BY THE COMMITTEE TO COMPLETE THEIR PURCHASE." The objective point of the entire agreement is displayed and defined in the last quotation. Williams started with a plan to obtain a contract to control a majority of the bonds with bondholders separately. He would have appointed, probably, Thomson and Williams, a purchasing committee, or some such persons.

VIII.

A majority of the bondholders made purchasing agreements to defend themselves, dated in December; these are recited in the agreement dated the 10th of February, and on file in this record. Not a word is to be found in the decree nor in the agreement which displaces this committee, nor could one word have been admitted into any decree or order to subject these trustees to any subordination to any, save the deed of trust and the order of the Court.

The reports submitted show conclusively that the trustees treated with none but this committee, and that they did not for an instant allow of a substitution of any one for these responsible and trustworthy persons, Bliss, Von Hoffman & Ames. Their settlement was with them alone. They received from them in payment of their bid the bonds and the coupons described in the deed of trust, and when their bonds and coupons were exhausted they were paid the lawful money of the United States. They did not receive as trustees a single bond of the five thousand bonds of the sum of five millions, issued by the Louisville & Nashville Railroad Company in payment of the bid made by Bliss, Von Hoffman & Ames. As trustees, it was no part of a duty to organize or assist in the organization of the New Orleans, Mobile & Texas Railroad Company, reorganized. After that Bliss, Von Hoffman & Ames had fulfilled their entire obligation as *purchasers at the sale* in the payment of

the *price* and the production of a suitable bond. They (the trustees) executed deeds prepared under the sanction of the committee to the assignee of the committee.

The dealings with this firm, or the corporation into which the noun of multitude signified in Thomson and Williams became merged, followed after the settlements with Bliss, Von Hoffman and Ames. These assignees have no connection, privity with, nor right to inquire of the manner of those settlements in so far as the trustees or parties to them; nor to claim as depositors of bonds under an agreement with that committee what the committee did not claim in their use of the bonds in settlement with the trustees.

IX.

A more critical examination of the vocation of these abnormal agents is proper, to ascertain their relations to these appellees and to the suit No. 7,357. Williams, as a trustee, with his co-trustee were parties to the bill as having a junior mortgage on the same property. He appeared, filed his answer in four lines, in 1875, (Record, p. 60,) and is not heard from afterward till the 15th of December, 1879. He sent from New York an agreement for a continuance of a motion made in the cause to be heard that day for a decree of sale. This motion was renewed from time to time till the 5th of March. Record, pp. 502, 530, 532, 534, 539, 550. On the 5th of March the decree of sale was passed by the Court. On the same day Williams filed an ex parte petition to make an independent sale under the second mortgage, and without a subpœna or citation, the petition order was made. The purchasing agreement of the 10th of February had been made and was filed in the Court by the plaintiffs the 27th of March, 1880. This agreement does not profess to be made with the *trustees*, nor could they have been parties as trustees in a fiduciary character without a breach of their trust and the principles of the Court. These

trustees had very large powers of administration and control, and might have sold all the property themselves under the powers of the deed. They had a right and a duty to bid in certain cases, and might be called on to withstand a committee representing a fraction of bondholders. They might well concede to a committee influence and even control in matters of detail which promoted the common interests or the convenience of a committee. In this instance there was grafted upon the legitimate purchasing agreements of December, recited in the agreement, an anomalous and complex arrangement, whereby the committee were to act so as to enable another and separate person or corporation to direct and control the action of the committee in important particulars. There was great room for abuse, and the trustees were bound to be circumspect so that none should arise. They were not parties as trustees, and were not bound as trustees or as plaintiffs to conform to the agreement unless that conformed to the deed of trust, the decree of the Courts and their own relations as trustees.

The plan brought forward to the committee existing under the agreement in December, was that this committee having a majority of the bonds should *use them* to purchase all of the railroad property to be sold by the trustees under the direction of Thomson and Williams, who assumed in advance the name of "*purchasers,*" and are called so in the agreement with some complacency long before a decree for the sale and before the agreement had become obligatory.

The proposition was to pay to each subscriber of the first mortgage bonds to the agreement, a bond or bonds of the same amount for his bonds, to bear interest from the first of January, 1880, with coupons of interest of thirty dollars each, payable 1st of July and January of each year till maturity. The holder of the first mortgage bonds resigned his coupons overdue, and for each bond a new bond of the Louisville & Nashville Railroad Company, secured by a mortgage on the property which the committee should purchase. There was to be a new corporation to receive the property pur-

chased and to give the mortgage stipulated. The existence of the certificates, amounting to $700,000, was well understood; so was the existence of expenses of suit, and of management, and of custody of property, and for service. The Louisville & Nashville Railroad Company assented to pay the certificates, and all of the charges and expenses. There were four thousand first mortgage bonds, for which four thousand bonds of the Louisville & Nashville Company were to be provided as the subject for exchanges. *Another issue of one thousand bonds* was to be executed to pay the certificates and all other charges which are covered by the terms of the deed of trust. The five millions of dollars in bonds were to be issued by that corporation *at the time* the purchase of the railroad property was *completed*, and transferred to the new corporation, and that *corporation* had delivered a *lease* and a *running arrangement* with *possession and powers of management to the Louisville and Nashville Railroad Company.*

The Louisville and Nashville Railroad Company signified their desires and dispositions in papers recited or alluded to, but is not a party to the agreement, and there are so many contingencies provided for elusion, that the agreement did not commend itself to those acquainted with its methods of extending itself. There were two conditions which might be expected to arise and are provided for. All of the first mortgage bonds might not be subscribed to the agreement, and in that case an exchange of bonds could not be made; and the holders of certificates and the claimants for repairs, improvements, compensations for service, expenses of Court, could not be paid by an exchange of bonds, as in the other case.

The eighth section of the agreement contains an assumption by the Louisville and Nashville Railroad Company, of the obligations and liabilities of the trustees, arising from management, bonds, contracts, *or otherwise*, and a *promise to indemnify them;* and the company undertakes that all liens superior to the first mortgage bonds, the certificates, and liabilities, and lawful fees, charges, expenses of the receivers and trustees, including the expenses and

charges of foreclosure, less an amount to be found in the hands of the receivers, shall be paid in *Cash* at the time appointed by the Court for taking title under the foreclosure sale, "and all amounts necessary to be paid to bondholders who shall not become parties hereto, shall also be paid in cash at the same time," *and the purchasers* (Thomson and Williams) HEREBY AGREE TO PROVIDE THE NECESSARY AMOUNTS, AND FOR THE PURPOSE THEY WILL BE ENTITLED TO SUCH OF THE SAID FIVE MILLION DOLLARS OF BONDS AS SHALL *not be* exchanged for bonds deposited as above provided, said bonds to become their absolute property charged only with the payments above provided for. Thus we also find "The purchasing committee *shall use their bonds to complete their purchase.* The CASH NEEDED shall *be provided by* Thomson and Williams (i. e. purchasers)." It is not difficult *now* to ascertain the pecuniary issues to Thomson and Williams from the concessions in this agreement, and effectually they had taken care of these, without need for a raid upon the trustees and their agencies. At the settlement of the price with the trustees, all of the bonds deposited with the committee were used by the purchasing committee. They used 3,868 bonds with the coupons thereon. One hundred and thirty-two bonds were not deposited, and, to pay these holders of bonds, $109,882.23 were paid to the trustees, and were deposited for that purpose in the United States Trust Company at their suggestion and with the leave of the Circuit Court. The entire sum paid, including that just mentioned, in *cash* by the committee was $963,790.06. We conclude that Thomson and Williams paid this sum into the hands of Bliss, Von Hoffman and Ames, and that the payment was thus completed of the bid made by them with 3,868 bonds and cash, as above stated. This payment by Thompson and Williams entitle them to the one hundred and thirty-two bonds not to be paid to the committee of the bonds of the Louisville and Nashville issue. They also received one thousand bonds, amounting to $1,000,000, of the same issue of bonds, for the payment of the

certificates and expenses of foreclosure, and compensation of service and costs and fees, as shown in the report of the master, as made on the 8th of May under the order of the Court. They (Thomson and Williams) had eleven hundred and thirty-two bonds of the Louisville and Nashville Railroad Company out of the five thousand bonds, the committee receiving 3,868. There was interest from January, accrued, till the middle of May on the bonds. The bonds were at par or above. The profit, therefore, after deducting the advance of $963,790 from the par value of the bonds, is $193,302.64. It will be seen that this firm had a direct interest to reduce the number of subscribers to the purchasing agreement, and they had a direct interest to make the bid at the sale as small as possible. So their receipt in bonds would have been enlarged and the advances of cash diminished. If they could have carried out the blustering opposition made on the 3d of April successfully, and in apparent ignorance of what was in the decree, no money for certificates or claims would have been needed, and one million of the bonds without the advance of any money would have been theirs. As it is, the sum actually realized is greater than the entire report for the payment of five years' service for trustees, attorneys, master, marshal, clerk, printers, which is the subject of their exceptions and appeal. "THE GLEANINGS OF THE GRAPES OF EPHRAIM IS BETTER THAN THE VINTAGE OF ABI-EZER."

It cannot be denied that this provision was bountiful on the part of the Louisville and Nashville Railroad Company, or rather, we should say, the board of directors of that corporation *at that time.* Whether any portion of it would be earned depended upon a variety of contingencies, and the result could not be determined until the trustees had fulfilled every duty and had transferred their entire property. It was only then that the Louisville and Nashville Railroad Company might be required to issue a single bond. Nor was it until after this period had fully expired that the firm of Thomson and Williams became entitled in any manner to the

name of "purchasers" they had so complacently substituted for their own in the purchasing agreement. They might have become such at an earlier date, but it would have changed the whole order had they made the election to do so. The eighth section of the purchasing agreement concludes: "If *at the sale* OTHERS BID, *the purchasers may, at their option,* AT THAT TIME *pay to the committee one hundred and seven per cent. of the principal and interest on said principal, at six per cent. per annum, from January* 1*st*, 1880, upon the bonds deposited and represented by *the committee, and become the owners thereof,* and *in such event they may conduct their own bidding and exercise their own discretion in respect thereof.*" Had they supplanted the purchasing committee, we should not have had cause to deal with them as interlopers. They have not made the election. The trustees have sold the trust property at the public sale. From the purchasing committee, the trustees by the terms of the decree were postponed twenty days, and they must receive the first mortgage bonds as coined money for all of the price, except for the preferential charges and the bonds that committee did not have. The committee, as one party, made the settlement of the price. They were purchasers, and this payment was one essential feature in this contract. The performance of the act entitled these purchasers to the deed of conveyance of the entire trust estate. They could not pay that price in the bonds of the Louisville and Nashville Company. The trustees had none of that commodity. But the precise complaint of Thomson and Williams is they have not since received so many Louisville and Nashville bonds as they might have had. Their craving is something the trustees had never bargained for, and had no power to satiate their appetite. With Bliss, Von Hoffman and Ames the dealings of the trustees were confined to the first mortgage bonds of the New Orleans Company, and to buy the bonds that committee held and owned, the trustees surrendered their rights and their property to them as purchasers of those rights and that property. The purchasers, Bliss, Von Hoffman & Ames, then made an assignment upon the directions of

these persons to a new corporation, and it was only then that they had any right to call themselves "purchasers." Then, too, the Louisville and Nashville Railroad Company appeared upon the stage for action. They say "that upon receiving from the new corporation to be performed, and to which conveyance shall be made through the purchase of Thomson and Williams of the said railroad, franchises and property between New Orleans and Mobile a lease and agreement by which the same shall be placed in its possession and under its control and management, and in consideration thereof the Louisville and Nashville Railroad Company *will execute and issue its* coupon bonds to the extent of $5,000,000." In the receipt of Rowland, returned to the Circuit Court, (Supplemental Record, p. 26,) the delivery to the Louisville and Nashville Company as lessees is acknowledged on the 14th of May, 1880. We may conclude that Bliss, Von Hoffman & Ames now recognized that the dominating condition in their agreement, "that the final conveyance, transfer and disposition of the property shall be made upon receiving in lieu and exchange of the said four millions of bonds as shall be deposited bonds of the Louisville and Nashville Railroad Company, as above mentioned, and always subject to the proviso that Thomson and Williams (called purchasers) shall perform all their agreements hereof." The assignment of the bid was on the 13th of May to the new corporation. (Supplemental Record, pp. 7, 8.) We may infer that the sum of $963,790.06 which Bliss, Von Hoffman and Ames paid over to the trustees came from Thomson and Williams. The agreement was that they should furnish or provide the cash to be used at the sale, and thus it was used by them to pay their own debt of record arising out of their purchase twenty days before of the trust property and to acquire the title to the property. Thus, having paid the money and completed their purchase, this *committee* might assign their bid at the sale to the new corporation referred to in the agreement upon the request of Thomson and Williams. That corporation could make the lease and surrender control and man-

agement to the Louisville and Nashville Company for a period of fifty years, with a running arrangement for the same period, and the five thousand bonds would be issued by the Louisville and Nashville Company for $5,000,000, and then Bliss, Von Hoffman and Ames would receive 3,868, with an interest accrued thereon from January 1, 1880, and then Thomson and Williams would have 1,192 of the same class, and then a grand division. If it did so happen that Williams had deposited 582 of the bonds, he would have had a double share. But this is not all. The Louisville and Nashville have a LEASE. That corporation has provided every dollar paid to the trustees or bondholders, and a large excess that the trustees do not receive. They have only a lease. The new corporation is a landlord, besides, for the fifty years, and an owner afterward. The complaint of Thomson and Williams is that in the PROSPECT of this fortunate consummation, to arise only after the trustees had sold the property and the purchasing committee had become the purchasers and had paid the price and had assigned their interest to a corporation which had no existence previously, and that corporation had made a lease to the Louisville and Nashville Railroad Company, which had issued a million of bonds so as to effect these things, that their brokers, who were to have the residuum of the bonds not consumed, may become parties so that this residuum might not be diminished.

X.

But whatever hopes or expectations the agreement when completed excited, it was beyond the province and capacity of the trustees, as plaintiffs, trustees or receivers, to conduct the suit in reference to all of the by-ends and self-ends expressed in it. This Solicitor upon the first tender of correspondence and consultation declined, and never did admit that the trustees could do other than what the deed of trust imposed, and what the decree estab-

lished, and that nothing could be admitted into the decree not accordant to the settled rule of the Courts. In so far as the agreement was not incongruous to these no objection was made. The decree of the Court provided for a fair, open, public sale; the agreement provided in articles for manipulation whispered arrangements at the bidding, and that the committee should ally with persons to purchase, not for money but on a credit.

All the principles regulating Courts of Chancery are affronted by arrangements which disturbed the equality of competitors at such sales. No person under a collateral, separate, independent contract, which the Court could not enforce except in a distinct and independent suit, could be allowed any special favors at the hand of the Court. The public administration would be continually disturbed by irrelevant controversies thus arising. In March the decree was made providing for a public sale, by advertisements, costing fourteen hundred dollars and more, in three cities in daily papers, and with great care to secure open and frank competition, and containing guarded measures for fairness and equality, and yet here are persons who some weeks before had contracted, and in advance of a decree, denominated themselves purchasers, and obtained favor at the hands of the committee, and even at the prospect of a competition could stop the bids of the committee, buy their bonds and bid for themselves. The object of these persons is to speculate. The arrangements favored speculation on the bonds of the debtor defendant, on the inattention or ignorance of certain bondholders who did not assent, and then upon their employers, and finally by litigations with all of those persons connected with the suit who would not lend themselves to their sordid efforts. Their first appearance was to stigmatize acts and measures and orders of the Court itself, and which were protected in the purchasing agreement, and which they were obliged to recant and retract. On principle and upon the practice of Courts the expectations generated by the purchasing agreement are not *rights* which give the sanguine parties a place in Court. On the same pretence

they might have asked a decree on the purchasing agreement because they were denominated purchasers in the purchasing agreement.

XI.

The first and the third articles of the deed of trust designate the appropriation of moneys which shall come to the trustees, whenever by reason of a default on the payment of interest on the railroad bonds they shall be required to enter upon the property in accordance with the deed of trust for a temporary administration or to make a sale. The trustees in such cases were to deduct from the moneys in their hands the sum required to pay the expenses of the sale, and counsel and attorneys' fees, and for advances and liabilities for repairs, replacements, improvements, custody and care of property, and compensation for their own services. Record, p. 36. The decree of sale follows this deed, and decrees a priority and a preference of payment to all of such claims and orders, the master to ascertain their sum. The *decree directs that there be paid at the sale in cash, a sufficient sum for this purpose*, and that notice be given at the sale. The sum agreed on before the sale was $900,000. In an attempt to fix this sum the first opposition to each and every item, whether in the decree or not, was elicited from these appellants; the appellants doing what Justice Twysden rebuked a lawyer for doing: "You have leaped before you came to the style."

When the railroad came to the control of the trustees, their first observation was that it was not in a condition to afford a safe transportation of persons or of property. There had been deterioration, decay, waste of equipment and of necessary material, and there was general dilapidation and an inadequacy to meet the public engagements of the corporation.

The railroad runs along the shores of the lakes and sounds which are connected with the Gulf of Mexico, and numerous and broad

bays and rivers must be crossed over bridges. These had been wooden structures, and had become insecure and insufficient from the effects of climate and the ravages of the vermin which fill those waters. The first business of the trustees was to reconstruct the bridges over Chef Menteur, great Rigolets, Pearl river and the three Pascagoulas; and not long after over those across the bays of Biloxi and of St. Louis. No railroad in the United States, of whatever extent, has bridges of greater length, or which require so much care and attention. The contracts are in the record, and among them is one for a creasote apparatus, to secure the wooden structure from the vermin. The expenditures were needful, and the contracts were approved by L. P. Morton, Joseph Seligman and Oliver Ames, a committee of bondholders. Record, pp. 18, 22, 46–56, 432–439. The road bed, the ballasting of the road, the relaying of the tracks, and the use of steel rails are the improvements made.

The railroad passes over a district of marsh and of spongy lands, which had so far sunken as to make the railroad perilous, and unless reconstructed it was obvious that it could no longer be used as a public highway. For such ameliorations science, skill, experience and intelligent and persistent industry were demanded. The trustees undertook this work, and, in carrying it on, personally performed every class of duty necessary for successful railroad management. They supplied the place of president and directors, of superintendents and management. They supervised and directed the constructions, and projected the improvements needed. The reports of the master submitted to the Court refer to the fact of the energy, skill, economy and prudence of this administration. Record, p. 88.

The object was to render the road adequate to the fulfilment of the demands that the public had a right to make for security, expedition and regularity in service. The expenses were, of course, large and the labor great.

The plans, the cost of the execution and the benefit secured were submitted to the committee of bondholders; and it will appear that there was no opposition nor exceptions aroused during this period, and that in the winter of 1879, the trustees were ready to make a reorganization of the company composed of bondholders. Besides the embarrassments arising from the condition of the railroad, and the exhausted condition in which it was found, the trustees were beset with litigations involving the most valuable of their property and franchises. The property upon which the tracks, depots, crossings and offices of the company were situated were claimed by the city of New Orleans. One of the suits is now pending in the Supreme Court. A judgment had been rendered adversely, and on reargument it was reversed and a new suit was commenced and has reached this Court. This property is of great value, and is estimated by city officers at several hundred thousand or a million of dollars. The right to use their wharf property was contested by Henry Ellerman. The right to close certain streets was contested. Arrearages of taxes were claimed for about $200,000, and the account was compromised and settled. A long suit relative to the title of the Pontchartrain Railroad Company was ended. The suits in Mississippi related to the Pearl River Bridge and affected other structures. So that State claimed taxation contrary to the immunities granted. In Alabama the contest was for property and to expel the Company from passing through the city. Several of these suits were of importance, because of the property and because of the questions. The suits of the City of New Orleans, of Ellerman, of Charles Morgan, of Donavon, of the State of Mississippi, about the Pearl River Bridge, have reached the Supreme Court of the United States. The loss of these would have impoverished the corporation irreparably.

The records of a portion of these litigations are to be found in the Record, pp. 693–900, 920–994, 981, 1229. In Mississippi and in Alabama the corporation enjoyed an immunity from taxation under conditions. There was adverse legislation and opinion on

the subject leading to incessant litigations. At the time of the surrender of the property under the sale, one of these suits was pending and four locomotives were under a seizure. Supplemental Record, p. 9. The same controversies existed in Louisiana, and the arrearages claimed were inordinate and successfully contested. During some of these years the pestilence raged in New Orleans and on the coast along which the railroad passed, and at Mobile. In each of the counties and the towns there were officers appointed by local authorities to enforce quarantine regulations for their locality. Under the most adverse circumstances the road was managed, otherwise famine would have been added to pestilence to scourge the cities of New Orleans and Mobile.

In the conclusion of their administration these officers submitted a full account of their administration for the whole period of administration. In this report all the receipts and all of the expenditures from every source have been represented and accounted for. The testimony will show energy, vigilance, capacity and faithful and diligent attention to various and discordant duties, with the best results to those represented by these plaintiffs. Many of the details of the administration came before the Circuit Court. Much of the litigation was conducted there; and the habitual attention and care of the trustees was visible. The prejudices and resentments of the community subsided after the disorder, dilapidation, uncertainty and insecurity which had existed had been superceded by the erection of a complete and organized public improvement of a very superior order, which contributed to renew hope and prosperity.

In determining the compensation for such service, the facts are to be considered of the appointment and of the service. The appointment was made by the persons associated to complete the work.

It was well known that these trustees resided permanently in New York; that they had interests and relationships at a distance from the place where the work was to be performed. The exposure, risk,

sacrifice of other interests, are to be considered, for they were considered by the persons interested on either part. The deed of trust as we have seen provides for a reasonable and a just compensation, and this takes priority of the others.

Under the conditions shown to exist, the trustees were to reconstruct, reorganize, bring into successful and profitable use a railroad over a very unpropitious location and among a sparse and not a friendly population. The entire responsibility of this was imposed upon these persons. This was not a case of ordinary and regular labor of a specific kind and to be followed with regularity. It was to project and superintend and insist upon the completion of difficult and important works. These trustees have had, at the same time, to use the influence, the character and the credit which they enjoyed to make the work successful. Their associates were neither prompt nor confident of success. They were not ready to expend their ready money on what they deemed an uncertainty, perhaps a loss. They had heard of the length of these lines of bridges, of the floods, of the fevers, of the indolent and sluggish population, of the absence of trade or production, and the hopelessness of every attempt to make a stable and permanent and remunerative railroad. The duties performed were those of an owner who proposes to make his improvement and to realize from the result of its completion his compensation. The trustees governed the men and the things to accomplish the contemplated object. There was no other government, there was no resource but in the energy and perseverance of the trustees.

Who impugns the charges?

None of those who, during their five years and upwards of labor and diligence, appeared on the Record to object. The committee holding 3,868 bonds were cognizant of the presentation of the charges on the 20th of April in New Orleans. This was four days before the sale. They, with trustees and the master, placed at the sum of $900,000 the sum to be paid to assure these charges. They did not come with opposition or exception. They held all

the bonds except 132, and on them devolved the duty to *use* them to buy the property to the best advantage. They preferred that the charges before made should be withdrawn, and that they be presented anew with a defined object. When they came to settle their bid with their bonds, they made no opposition. When the cash was required to pay the preferential claims they paid it without murmurings or disputings. In the convention of the bondholders, 3,868 bonds were cast for the payments; 132 bonds not present nor represented.

Who impugns the charges?

The bondholders whose names appear on this record as creditors under the deed of trust by the master's report prior to the decree, and who were the constituents of the trustees from 1875 till 1880; the various committees who from time to time certified to the Court their approbation of the ameliorations and expenditures, and who were thus placed in some relationship to the Court, and to the suit in the Court, have not made opposition or complaint to the demands of the trustees for what the deed of trust *guarantees:* "a just and a reasonable compensation." The deed of trust conferred on these trustees plenary powers of administration. They were entitled to do under it all that the Circuit Court has sanctioned, without asking of that Court a sanction; they could have sold this property upon their own advertisements, prescribed the terms of the sale, and conducted it without a decree, under the powers conferred in the deed, and could have audited their own accounts. We do not say they were not ultimately accountable to the Courts, but rarely has there been made a more liberal endowment to trustees of faculties than are to be found in this deed. The conditions about them compelled the trustees, beside of their own sense of duty to their constituents and to themselves, to seek the aid of the Circuit Court, and to have the judicial control and judgment upon the acts they performed. When these trustees, each for himself, *commissioned* their solicitor to file the statement on the 20th of April, their own judgment accompanied this state-

ment. It was their own audit of their own account under all the responsibilities attached to the act. The purchasing committee then holding 3,868 bonds of the four thousand, were cognizant of this claim at this time. If that committee had come to the trustees on the 13th of May and offered the bonds for payment of the bid upon the terms which the master had reported for Thomson and Williams, and to make this tender effectual had followed it with what the civil code calls a *real tender and consignment*, C. C., p. 2167, or had in any other intelligible mode declared their dissent from the acts of the trustees and their demands, a case perfectly intelligible would have been presented for adjudication by parties, in a condition to make this case. Bliss, Von Hoffman & Ames came with their bonds the 13th of May to settle the price. The precise sum due on each coupon had been calculated. Supplemental Record, pp. 1, 2, 3. The report shows a harmonious and *a satisfactory* settlement, without any *tender*, followed by *real tender* and adjournment to the Court; nor was there a payment under a protest and exceptions and reference to the Circuit Court for any adverse opinion. Then followed an assignment by Bliss, Von Hoffman & Ames to a corporation which had, like a remarkable vegetable we have read of, that had sprung up in a night at Nineveh a long while ago.

This corporation acquired on this occasion her first increment of property. The president of the corporation, William S. Williams, came to the trustees on behalf of the corporation with the assignments which had been executed on the 13th of May. It recites that Thompson and Williams had directed that assignment to be made by the purchasers at the sale to this body, according to the purchasing agreement. Supplemental Record, p. 7. As no such assignment could be obtained before that firm had complied with the agreement, we assume the cash advances had been made by this firm that day, and as a consequence of the payment by the committee this assignment had been made. Now, we do not hear that either of these parties in asking for the deed to be made

to this new corporation, and in asking for the surrender to it of all of the property sold by the trustees and paid for in money and bonds, precisely as the decree directed by the purchasers; that Thomson and Williams made any claim on that money or these bonds delivered to the trustees, either as purchasers so-called in the agreement, or as a bondholder, or as connected with the second mortgage as a trustee, or a holder of second mortgage bonds.

We assume that the settlement here, as with the purchasers at the sale, was satisfactory. The purchasing agreement reveals that the committee bid at the sale according to the suggestion of Thomson and Williams, and that the assignment of the bid was requested by them, and that the payment of the price was in furtherance of their plan and with their privity, and that they secured a specific and immediate benefit therefrom, and that the amount of payment, form of payment, and the results of the payment, were severally prompted by them for their own advantage. There was no suggestion at any stage of reservations, or objections, or of a design to make reclamations of any of the price, or of claim on the price, or of the control of the appropriation of the price. This purchasing agreement was filed in the master's office the 27th of March for inspection. It had two-fold aspect and purpose. A purchasing agreement proper is an arrangement among bondholders to secure concert among themselves to prevent the sacrifice of property bound to them alike. This agreement besides, and in addition to the arrangements of bondholders, provides for a speculation by foreign parties, and with covert arrangements, and hence it was filed for inspection. This document refers to the fact of a sale under a decree to be rendered at New Orleans. Thomson and Williams communicates overtures, and offers to the Louisville and Nashville Railroad Company to engage with them in making mutual profits. The Louisville and Nashville Company assumes to issue bonds to be used, to enable them to deal with a *majority* of bondholders, so that by them the property should be purchased and paid for differently from the arrangements of the decree, and differently from all

other bidders. The Board of Directors of the Louisville and Nashville Railroad Company seemed charmed and elevated with the prospects opened to them. They were to obtain a lease, a running arrangement, control, management, possession with cars moving, of a railroad and railroad property, at a cash sale, without the use even of one trade dollar. There is an abrupt, nonchalant air in the dispositions concerning money and compensation that seemed to fascinate this board. As for money the purchasers, Thomson and Williams, so describing themselves, will provide that at call, and as for compensation for all they should do, they asked merely the *remnants* and *leavings*, that the Louisville and Nashville should not spend a thought upon—such bonds as were not used or needed. The remainder, after the Louisville and Nashville had enjoyed the lease and were tired of running arrangement, will go to a corporation to be organized by us.

Thomson and Williams commenced their labor with the Louisville and Nashville Railroad Company. Their contract with the company is speculative and aleatory, and their compensation is dependent upon an entire success of their measures in securing a lease, a running arrangement, possession and money. They acquired no vested rights to compensation until they had obtained a title by the deed to the corporation newly organized. Before this event Bliss, Von Hoffman & Ames, owners and holders of the bonds for all the purposes of making the purchase and paying for the property, had made their payment. The relation of creditor and debtor, vendor and vendee, trustee and *cestui que trust*, created by the purchase by the committee, with the trustees, had been dissolved by the payment of the bid and the delivery of the deed. The dividend on each bond had been paid to the owners. With the trustees they never had a contract of any description, nor established any relations creating obligation till they received the assignment.

XII.

The considerations applicable to the determination of the amount to be paid to the trustees, have been partially presented. A just and a reasonable compensation under this deed of trust implies remuneration for the capacity, skill, fidelity and productive industry employed, and the responsibility and privations endured in the tasks. As a case of administration it has some likeness to compensation for executors, curators, syndic, of insolvent estates. The code of Louisiana allows two and one-half per cent. to executors and curators upon all of the effects movable and immovable passing through their hands. Syndics of insolvent estates five per cent. upon the first $50,000, three for the next, and two for all other sums. C. C., 1069, 1187, 1201, 1202; Succession of McDonogh, 7 A., 475; Succession of Girod, 4 A., 386. Railroad administration is commonly settled by the allowance of salaries. 1 Woods' C. C., 346; Grant vs. Briort, 101 Mass., 570. The functions performed in this suit by the trustees were such as usually required several parties. Construction, fiscal management, superintendence, defence of property in and out of Courts, were severally required in excess because of dilapidation, pecuniary disorder, acrimonious litigations and violent infractions of right and possession.

XIII.

The motion to dismiss the appeal filed in December, 1882, and the Court continued it until the hearing because the record was not and could not be printed during the term, nor would the cause be called. With that motion a certified copy of the record in the Circuit Court in this cause was filed, and portions printed with the briefs as well as portions of the record already transmitted to the Court. The motion for the appeal was made the 21st of May,

1880, and allowed, but no bond was filed under the order until the 31st. The clerk of the Circuit Court returned no copy of any proceeding or order after the motion for the appeal on the 21st. This omission and defect was supplied by presenting with the motion a full and complete and certified copy of the record from the 21st till the 24th of June in the same term. When the clerk applied to me in June, 1880, to know if I had direction or desire respecting the transcript, he was answered that a full transcript should be made, and on my return to New Orleans, to some inquiry, he replied that it was full. I had no surmise nor suspicion that any portion would be withheld. The transcript contains 2,840 manuscript pages, and 1,240 of printed matter. It was apparently complete, and is so certified. Its number upon the docket was about 1,000, or 1,100, perhaps.

A brief on file was prepared in order to make the motion to dismiss the appeal at the term of 1881–2, and upon an examination of the record at that term the defect in the transcript was discovered, and a copy of the omitted record was obtained to supply the deficiency. The motion could not be submitted because of the inability of the clerk of this Court to print the record—the funds being exhausted or engrossed.

Upon informing the clerk at New Orleans of this omission, his explanation was that the record, he supposed, was complete, when all that preceded the appeal had been included.

The omitted record was procured at the expense of the appellees, and was filed, and all of the portions of the transcript filed by the appellants deemed necessary for the decision of the motion, was printed and a copy served. The appellants claimed the printing of the entire record, and so the motion was continued till all this was done. Whether the clerk at New Orleans was accurate in his conclusion to terminate the transcript with the order allowing the appeal, and before perfected by the bond filed some ten days after, and while other orders were entered in the same case at the same term, is a question for this Court to consider. The further

question is for consideration, whether a certiorari is the writ applicable to such a case, to supply an omission of the kind stated herein, and whether the mode adopted of supplying the record in this manner be allowable.

My purpose in this statement is to show that there was no negligence to be imputed to the appellees. The notion of the clerk that he must terminate his record with the date of the motion of appeal, was not communicated to me until I had communicated the omission. The certificate dated in October is of a full, perfect, complete record of the whole cause as existing at the certificate. In personal inquiries I understood that such a transcript had been sent. It was only after I had prepared the argument that I found the argument referred to papers which had not been sent to the Court. I shall file an affidavit in testimony of the facts herein stated with the clerk of this Court. The record has been printed under the supervision of the clerk at the request of the attorney of the appellees, and he has required the advance of the costs.

The duty of appellants under the 8th rule is to file a record complete in all of its parts, and the Court say in the rule they will not hear a case without one.

We respectfully submit a motion for the costs we have sustained in supplying the record.

XIV.

This Court intimate in one case that a writ of certiorari is allowable only to supply such omissions or defects in a transcript as may be occasioned by a failure to send a copy of documents which were filed before the appeal or a writ of error, and that a transcript properly terminates with the order for an appeal.

United States vs. Young, 94 U. S., 258.

A certiorari is not a writ of the Chancery Court, and in this Court it is a part of the remedial and auxiliary process, conferred by

statute, to be used under the rule or practice of the Court. Chief Justice Taney, a master of judicial administration as exercised in this Court, announced in a case from his circuit, that the Court was not limited to the certiorari, to supply omissions or to perfect the record, and suggested the motion to supply a defect.

Hudgins vs. Kemp, 18 H., 530.

Woodworth vs. Brown, 13 P., 1.

In Ableman vs. Booth, 21 H., 506, a writ of error to a Supreme Court was not returned by a clerk of that Court. On motion the Court allowed a copy to be filed, and waived the return of the writ without more ado about it.

We ask that this be adopted as a part of the record.

2. In support of the motion the record shows at what date and under what circumstances the bid of the purchasers at the sale (committee) was paid, and what disposition was made by the trustees of that money after it had been received. The facts that it was paid in 3,868 bonds by persons holding and owning them, and that money was paid for the holders of other bonds and was deposited for their use, disclose the mode of settlement.

3. The report of all disbursements of the money then paid by these bondholders at the time of and for the settlement of the price, and without opposition then or subsequently.

Nor was there any exception or opposition to the report of the 8th of May, fixing allowances, nor appeal from the final decrees of confirmation on the first of June, 1880.

4. The last order made in this cause (24th of June, 1880,) was on a petition of the new corporation, to ask the Court to make an order to deliver to the corporation $8,073.37, deposited in the Court under the order of the first day of June, confirming the final report.

These are material facts in this issue, whether the orders mentioned in the appeal be final orders, and whether this appeal is within the jurisdiction of this Court and under its established rule and order.

XV.

A final decree in this cause would embrace in it a statement that there had been an execution of the decree of the fifth of March, 1880, by the sale of the property, the transfer upon the payment of the price by the purchasers, the assignment of the bid, the execution of the deed to the purchasers and the surrender of the property and the discharge of the trustees after their accounts had been settled and the balances on hand had been deposited under orders in repositories chosen by the Court, and the payment of all of the costs.

The several orders made in this course of action were of an initiatory, progressing consecutive order towards the conclusion in the final of all the stages to the discharge of the trustees. Then there is a finality, and then murmurers, complainers and disputers are allowed by statute ten days to supercede and two years to interject appeals, and the losing lawyers have twenty-four hours within which to curse their Judges, according to a French saying, without reproach.

JOHN A. CAMPBELL,
For Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

WILLIAMS ET AL.
v.
MORGAN ET AL.
} No. 390.

BRIEF FOR APPELLEES.

JNO. E. PARSONS,
Of Counsel.

BURGOYNE, FENNER, 57, 59 & 61 Park Street, Law Telephone 587, N. Y.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS AND DAVID THOMSON, PARTNERS AS WILLIAMS & THOMSON, AND WILLIAM S. WILLIAMS, INDIVIDUALLY AND AS TRUSTEE,

APPELLANTS,

vs.

EDWIN D. MORGAN AND JAMES A. RAYNOR, INDIVIDUALLY AND AS TRUSTEES AND RECEIVERS, ET AL.

ON APPEAL FROM THE U. S. CIRCUIT COURT FOR THE DISTRICT OF LOUISIANA.

The original suit was in the nature of a bill in equity for the foreclosure by the appellees, as trustees, of a first mortgage of the New Orleans, Mobile & Texas Railroad.

At the Master's sale the railroad was purchased by a committee of the holders of the bonds secured by the mortgage. After compliance with the conditions of the sale they assigned their bid to a re-organized company in pursuance of the provisions of a purchasing agreement and under the direction of Williams & Thomson.

Williams was trustee, under a second mortgage of the railroad, and, as such, was joined as a party defendant in the suit. Williams *claimed* that he was the holder of bonds secured by the second mortgage, and he *was* or *claimed* to be the holder of bonds secured by the mortgage foreclosed.

Williams, individually, and Williams and Thomson jointly, as representing these several positions, appeal from so much of an order of the Circuit Court for the District of Louisiana, as made allowances to the appellees as trustees and as receivers of the railroad property, for their services; and as made an allowance to Hon. John A. Campbell, their counsel, for legal services.

Order appealed from, p. 1232.
Report of Master, p. 1236.
Exceptions of Williams and Thomson, p. 1237.
Order dismissing their exceptions, p. 1237.
Order for appeal, p. 1238.

The bill was filed on March 12, 1875. The appellees, as trustees, were complainants. The bill prayed the foreclosure of the first mortgage of the New Orleans, Mobile & Texas Railroad Company. The mortgage bore date January 1, 1869, and was executed by the company in its former name of the New Orleans, Mobile & Chattanooga Railroad Company, to secure $4,000,000 of mortgage bonds.

The parties defendant were the company, Henry J. Gardner and Peter Butler, purchasers under a previous foreclosure of a second mortgage, and Oliver Ames 2d and William S. Williams (the appellant), as trustees under an existing second mortgage, dated October 8, 1873, and executed to secure bonds to the amount of $2,000,000.

Bill, pp. 1–10.

On March 17, 1875, the appellees, who were trustees under the mortgage, were appointed receivers by the Circuit Court.

Order, pp. 16–18.

Williams, as trustee for the second mortgage, answered on October 12, 1875, submitting himself to the jurisdiction of the Court, and admitting the allegations of the bill.

Williams' answer, p. 60.

Gardner and Butler answered on October 12, 1875, disclaiming interest in the suit.

Answer of Gardner and Butler, pp. 60–62.

The defendant Ames answered on January 19, 1876, claiming whatever rights and equities were due under the second mortgage to Williams and himself.

Answer of Ames, p. 97.

On March 5, 1880 Williams and Ames, as trustees of the second mortgage, petitioned that if there were a surplus from the proceeds of sale, they might be permitted to receive, &c., &c.

Petition pp. 567–568.

On the same day, March 5, 1880, the Circuit Court made its decree of sale (Mr. Justice WOODS, then Circuit Judge). The decree provided that any surplus should be paid to Ames and Williams, as trustees of the second mortgage. It directed that Ames and Williams, as trustees, might, conformably to their petition, sell any property included in the second mortgage which might not be embraced in the first. The decree proceeds:

"And the Court, upon the petition of Oliver Ames and "William S. Williams, further decrees that the said Wil- "liam S. Williams appears to be a citizen of the State of "New York, and it appears that he is not a party to the "controversy between the plaintiffs, who are citizens of "New York, and the corporations who have had owner- "ship and possession of the property included in the said "deed of trust of the plaintiff, and are corporations of the "State of Alabama. It appears that he and his co-trustee "have a claim to the surplus, if there be any, to arise from "the sale, and to certain rights of property or franchise "not included in the sale of the property; that they offer to "coöperate in a disposition of all of the title they have, "and to the making of deeds to the purchaser, and that "they are competent to perform all of these acts, and the "Court assents thereto and that they be parties for all of "these purposes."

Decree pp. 569–573.

The sale took place on April 24, 1880. George Bliss, Louis A. Von Hoffman and Oliver Ames, as a committee

of the first mortgage bondholders, bid off the property at $4,000,000.

Trustees' report of sale pp. 1171–1172.

Any rights of Williams and Ames, as trustees under the second mortgage, were sold at the same time to Williams and Thomson, "the highest bidders," for $100, "which said amount, by direction of William S. Williams, one of the said trustees, was not demanded."

Master's report p. 1234.

On May 29, 1880, the purchasing committee, after compliying with the conditions of the sale, assigned their bid, at the request of Williams and Thomson, to the New Orleans, Mobile & Texas Railroad Company, as reorganized.

Supplemental record pp. 7–8.

There was due upon the bonds secured by the first mortgage, for principal and interest (Suppl. Record, p. 2)	$6,207,784 32
Certificates of indebtedness	700,000 00
Counsel fees, publishing notices, Marshal's, Clerk's and Master's fees not in dispute (Master's Rep., p. 1236)	21,716 95
Allowances to trustees and their counsel by Master's report of May 3, 1880 (p. 616), and not excepted to (fol. 2876)	46,677 24
	$7,075,178 51
Amount of bid	4,000,000 00
Showing a deficiency of	$3,075,178 51

to be increased by the disputed amounts allowed for the services of the trustees and receivers and their counsel.

The amounts allowed by the Court and complained of by the appellants are as follows:

Amount of allowance to J. A. Raynor, trustee, from date of entry upon the property, February 1, 1875, to May 8,	

1880, 5 years, 3 months and 8 days, @ $15,000	$79,083 28
Amount of allowance to E. D. Morgan, trustee, same time as J. A. Raynor, @ $10,000 per annum	52,722 15
Amount of allowance to J. A. Campbell, counsel fees, from February 1, 1875, to May 8, 1880, 5 years, 3 months, and 8 days, @ $6,000 per annum	31,633 28

On December 2, 1875, the appellees, as plaintiffs in the cause, submitted a petition,

Petition, pp. 80 *et seq.*;

which was referred to Master Woolfley;

Order, p. 88;

and upon which he made a report,

pp. 88 *et seq.*;

which was confirmed on December 10, 1875,

Order of Mr. Justice Woods, p. 92,

which report stated that Mr. Raynor, one of the trustees, "has performed the duties of general manager of the New "Orleans & Mobile Railroad, in place of the officers of the "company, since the first day of February, 1875, perform- "ing the functions of president, directors and manager, "and has doubtless had great care and responsibility in the "management thereof, in addition to his duties as trustee."

The Master further reported:

"FOURTH. Considering the care and responsibility of a "general manager, performing the duties of president, "directors and manager of such a railroad as the one in- "volved in this cause, the compensation ought to be ade- "quate. An allowance of $10,000 per annum, with neces- "sary expenses, not to exceed $2,500 per annum, should be "made Mr. Raynor for his services from the first day of "February," *et seq.*

The petition stated that no application for *trustees'* allowances was designed, but only in respect to salary of general manager.

Petition, fol. 183.

The report of Master Woolfley is to the same effect, the allowance being for services rendered by Mr. Raynor, "in addition to his duties as trustee."

Report, fol. 198.

No application for an allowance or for compensation for the discharge of their duties as such was made by the trustees until March 9, 1880. Then the Court, in pursuance of provisions of the decree, ordered the Master to ascertain what sums were due under the mortgage for the expenses of management, compensation for trustees, &c.

Order, p. 574.

On April 23, 1880, Williams individually, and Williams and Thomson jointly, filed petitions asking to be heard before the Master, and asking the Court to "assert, maintain and defend such rights as they had or might have," &c.

Petitions, pp. 610–612.

The Court ordered the petitions to be filed and granted the application of the petitioners to be heard.

Orders, pp. 611–612.

An immense amount of evidence was taken upon the reference, documentary and otherwise.

Report, pp. 619–1232.

On May 3, 1880, the Master made his report, allowing to Messrs. Morgan and Raynor for their services, as trustees, $25,677.24, and to Judge Campbell, as counsel, $20,000. The allowance was at the rate of $5,000 per annum for the two Trustees and Receivers from March 12, 1875, to May 8, 1880.

Master's report, pp. 613–616.

The amount asked for by the trustees was $129,116, being at the rate of $25,000 a year for the two. Williams and Thomson having objected to this, on April 20, 1880, the claims as presented were withdrawn and were presented anew, the trustees, by the new claim, demanding $15,000 annually, each.

Report, p. 614.

The trustees having excepted to the Master's report, their exceptions and the report were heard before Mr. Justice Billings. On May 7th, 1880, he made his order, directing the Master to reform his report "by an allowance to the trustee, Edwin D. Morgan, of a salary of $10,000 per annum from the date specified in the report, instead of the annual allowance reported," and "by substituting the sum of $15,000 per annum, instead of the sum stated in the report, according to the dates therein, for James A. Raynor, trustee."

The Court ordered the Master to substitute for the allowance to Judge Campbell, a salary of $6,000 per annum.

Order, p. 1232.

On May 8th, 1880, the Master filed his reformed report, making allowances in accordance with the directions of the Court.

Reformed Report, p. 1236.

Williams and Thomson excepted.

Exceptions, p. 1237.

On May 17th, 1880, the exceptions were dismissed.

Order of Mr. Justice Billings, pp. 1237–1238.

On May 21st, 1880, an order was entered allowing Williams; and Thomson and Williams to appeal to this Court.

Order, p. 1238.

The citation was issued on June 1st, 1880.

Citation, p. 1240.

The appellees maintain, first, that there was no error in the orders appealed from; and, second, that the appellants have no right of appeal.

First.

The order and decision appealed from should be affirmed, if appealable, for the reason that they are right.

1. The appellants wish this Court to try the question of the value of the services of the trustees and of their counsel, *i. e.*, to try what is preëminently a question of fact. If the Court will do so, the appellant must upon such trial establish that the Circuit Court erred. It did not err.

For over five years the trustees discharged their duties as such. During that time there passed through their hands in cash, $7,250,000 (fol. 1138). They sold the railroad for $4,000,000 and disbursed the proceeds.

When they entered upon their trust the road was bankrupt in money. Its property was of so little value that the best rate at which its certificates of indebtedness to a limited amount (a first lien prior to the first mortgage bonds) could be placed was 92½ per cent.

> Orders of March 27, 1876; May 26, 1876; April 2, 1877: pp. 115, 124, 190; and the reports of the Master and other papers to which they refer.

In other words, the value of the property was not considered to be equal to the lien preferential to that of the first mortgage bonds. And at 92½ per cent. the large bondholders, almost without exception, refused to take the certificates, leaving the trustees to make all the arrangements, to do all the work, and in the end to advance their own money.

> Letters inviting bondholders to take Receiver's certificates, pp. 108, 121, 329, 351–3.
>
> Answers of bondholders, pp. 120, 328–333, 352–3, including one from the appellant Williams. "I prefer you should arrange for the funds you wish independent of me, but, if necessary to meet the requirements of the trustees that I should furnish my quota, I will *endeavor* to do so on short notice." Fol. 681.

At the end of the administration of their trust the trustees were able to turn over to every holder of a $1,000 bond, a bond of the Louisville & Nashville Railroad Company worth at least that amount, and in addition were able to procure the reimbursement of their certificates of indebtedness and all their expenses and outgoes.

> Agreement, pp. 579, 580.

In rendering his decision, Mr. Justice BILLINGS thus, in a general way, stated the services which had been rendered by the trustees and receivers, and his view of their value:

"The property which has been in the hands of the trustees during the time of the execution of the trust, a period of upwards of five years, has been by them sold for $5,000,000, payable in the first mortgage bonds of the Louisville & Nashville Railroad Company. The bid on the part of the bondholders who were the purchasers at the sale was $4,000,000. The gross receipts and expenditures of the trustees during the continuance of the trust have been $7,250,000, exclusive of the payment resulting from the recent sale of the road in bonds which are to be received by the trustees, and by them distributed among the bondholders.

"When the road passed into the hands of the trustees it was imperfectly built, dilapidated and greatly in need of thorough reconstruction. Now it is conceded to be one of the best built roads, if not the best built road, in the whole Southern country. A very large portion of the disbursements have been for expenses unusual in their character, but required by the wretched condition of the road, and expressly authorized by the tenure of the deed of trust, viz., for repairs, replacements, ameliorations and improvements. By the terms of that deed the legal estate was vested in the trustees, and corresponding obligations on their part were fully recognized. These trustees were solicited by the corporation and its creditors, and the intervention of the Court was had only when they asked to be allowed to perform their duty as trustees under the supervision of the Court.

"They sold under the powers granted by this deed, as well as the authority of the Court. Under the same joint power or authority they are to receive and disburse all the proceeds of the sale among the bondholders. The title of the trustees, their authority to do all which they have done, was derived in the first instance from the corporation and its creditors, and their right to demand compensation comes from the same source. Indeed, their right to "just and reasonable compensation" is guaranteed expressly in the deed of trust.

"The receivership, so far from being the basis of the au-

thority of the trustees of their right to pay, was but added to facilitate the execution of a trust already created by the owners of property in substance for themselves.

"The question submitted is as to the compensation which is to be deemed adequate for the services of agents thus selected and appointed, and is to be determined by the value of their services, viewed as duties imposed by the deed of trust, and therein contracted to be paid for.

"An examination of the deed of trust shows how widely distinguishable the duties there assigned to the trustees are from those of mere receivers, which are for the most part confined to temporary occupation, use or repairs, and acts looking to mere preservation of property.

"The Deed of Trust provides as follows:

"It shall be lawful for the said parties of the second part, the said trustees, or the survivors of them, or his or their successors, to enter into and upon, all and singular, the premises hereby conveyed, and each and every part thereof, and to have, hold and use the same, possessing the said property, and operating and managing by their superintendents, managers, officers, servants, attorneys and agents said portion of said railroad herein described, and conducting the business thereof, and exercising the franchises pertaining thereto, and making from time to time all necessary repairs and replacements and such necessary and useful alterations, additions and improvements thereto and thereof as may seem to them to be judicious, and to collect and receive all tolls, freight, incomes, rents, issues and profits of the same and every part thereof while and during the time the same shall remain in their possession, ownership and control, as hereinafter provided; and after deducting the expenses of operating said railroad and conducting its business and the expenses of the said necessary repairs, replacements, alterations and improvements, and the necessary expense of the custody and care of said property, and all payments which may be made by them for taxes, assessments, charges and liens upon the said railroad and property and any part thereof, as well as just and reasonable compensation for their own services, and for the services of such attorney and counsel as may have been by them employed.'

"The trustees came into possession under this grant of power which permitted and required the total amelioration and reconstruction of the road. In executing this power they were compelled to occupy a field of labor far removed from their place of residence; they have devoted upwards of five years to the total rebuilding of a railroad which was located in a region where such construction was almost impossible. They have built upwards of four and one-half miles of bridges, and in so doing have perfected and made an original application of an invention for preserving timber wholly or partially immersed in water; they have contrived to build foundations in morasses which were apparently bottomless. They have protected the trust property against hostile litigation. They have presented their monthly and annual reports with a succinctness and accuracy which would be creditable to the Treasury Department of the Government itself; and they have, in all the ramifications of this extensive legacy, acted with such a close attention to its general features and its minute details, with such practical wisdom and with eyes so single to the interests of their employers or constituents, that to all their numerous applications and accounts not a single objection has been made. To the conduct of this agency they have received and disbursed monies which, when added to the price recently by them realized for the road, makes $11,250,000.

"Having thus executed such a trust they present their claim for their compensation. The Court is relieved from the delicacy which more or less attends the fixing of the amount of compensation when the owners have had the voice in the selection of the agents, and when the thing to be done depended upon the judgment of the Court itself. The agents in the case were selected by those having the proprietary interests, and the things to be done were specified and defined in the instrument under which the agency was established. It is not questioned but that the duties thus created on the one part and assumed on the other have been performed, and that, too, in a most satisfactory manner. The matter, therefore, to be determined by the Court, is to fix the compensation between employer and

employed for services rendered under a contract admitted to have been faithfully executed.

"It was known to all the parties that the chief domicil of the corporation and its central place of business was in the City of New Orleans. Hence the State of Louisiana may be regarded as the place in which the contract was to be executed.

"The statutes of this State give to executors and administrators a commission of two and a half per cent. upon the value or productive property of the estate administered. C. C., Art. 1069 (old Art. 1062). From my examination of the statutes of the other States, I infer that this compensation is about an average of the statutory compensations of executors in all the States. It is to be observed that the duties to be demanded of the trustees, as well as their responsibilities, have been far more onerous than those of executors.

"The receipts and disbursements having been $11,250,000, the fees, according to this guide, would be $281,000, which is an amount in excess of that asked by the trustees by $100,000.

"*In re* Livingston, 9 Paige Chan. R., 440, Chancellor Walworth, in fixing the compensation of a committee for a lunatic, refused to be governed by any other rule than that given by the statutes with reference to the fees of executors. (See also Magee vs. Cowperwaithe, 10 Ala., 968).

"But the statutory percentage, though more properly a guide in affecting the value to services rendered as here under a contract than in the case of mere receivers, is not necessarily the most just guide. The Court should regard all the circumstances of the case, and then adopt as a rule or measure of the compensation either a percentage or a fixed amount, or an annual salary. It should be such a rule as will furnish simply an adequate pay for the service, considering the duties and the responsibilities.

Cowdrey vs. The R. R. Co., 1 Woods. R., 346.
Grant vs. Bryant, 101 Mass. R., 570.

"The duties and responsibilities involved in this case are, as we have seen by the very terms of the instrument imposing and accepting them, far beyond those of receivers,

and are almost literally co-extensive with those pertaining to absolute ownership. None of the cases cited and none which I have been able to find, involve a responsibility at all commensurate with that here delegated by the owners of the road to the Trustees, which, the record shows, has been met with a fidelity equal to that exacted by the Roman Law, in cases where the bailey was requested to use the most extraordinary diligence. The trustees, in a word, were required and undertook to rebuild and operate this road as owners would do. The rebuilding, from a geographical formation, has been attended with embarrassments which could hardly be met with elsewhere, except in India.

"Nor is the situation of the trustees, in respect to responsibility, fairly to be likened to that of presidents of railroads. It is far greater. These trustees have no board of directors whose authority could shield them. They have stood with the liabilities of owners, and one hour of negligence or faithlessness, at any time throughout the continuance of their trust, might have visited upon them the most ruinous pecuniary consequences.

"Considering the nature of the contract services of these trustees, the responsibilities which they entailed, and the unexceptionable manner in which they have been rendered, I think an annual compensation of $25,000 could not be deemed excessive. Mr. Raynor, as administering the operating department of the road, *i. e.*, the business of running the road, has received $10,000 per annum; this should be deducted. As Mr. Raynor has given to the business his personal presence and Gov. Morgan has not, I think that, of the remaining annual salary of $25,000, Mr. Raynor should receive $15,000 and Gov. Morgan $10,000."

The compensation allowed is for the services of the appellees, as trustees and receivers. They were appointed trustees by the bondholders, receivers by the Court. From the beginning to the end their action was in the view of the Court, and met with its approbation. How can this Court know what is suitable compensation, and with what propriety can it be asked to determine, upon review, the

value of the services, and then to say the Circuit Court was in error in the allowances which it made?

2. If the appellees were required to sustain their allowances by evidence of what is usually paid under similar circumstances, this was done.

(*a*) The case nearest in point was that of the receivership of the Mobile & Ohio Railroad. The receivers were in possession for about three years and two-thirds.

Fol. 2567.

Their receipts were about $8,100,000. There were two receivers. $24,000 a year was deemed reasonable by nearly 99 per cent. of the bondholders,

Fol. 1135,

and was allowed by the Court, in addition to $12,000 allowed to one of the receivers as general manager.

Master Woolfley says, in his report, that the Mobile & Ohio Railroad was 500 miles long.

Fol. 1103.

But neither the amount of service nor of money received and disbursed depends, necessarily, upon the length of the road.

(*b*) The Galveston & Houston Railroad was less than 60 miles long. There was but one Receiver. He was allowed $10,000 a year "after a great contest."

Master's Report, fol. 1103.

Cowdrey vs. Galveston R. R. Co., Woods C. C. R., 341.

Mr. Justice BRADLEY, in that case, said: "The question of allowance to the Receiver for his services is one that properly belongs to the Master's office, and not to the Court.

"In this case, especially, the local knowledge possessed by the Master, with regard to the business habits and compensation for business and professional services in this community, would have rendered a decision by him peculiarly

valuable. But, as it seems to be the desire of the parties that this matter should be decided by the Court, and as the order made by Justice SWAYNE seems to contemplate such a course, the Court will endeavor to discharge the duty as well as the means it has before it for arriving at a proper conclusion will admit. * * * Having come to the conclusion that the Receiver was fairly entitled to compensation, the next question is, What ought that compensation to be?

"It would hardly be a proper rule for governing the case to inquire what another even competent person could have been willing to do the work for.

"The Receiver's office is not put up at auction. His compensation is not fixed on that principle at all.

"The Chancellor selects a person whom he regards as competent and trustworthy, and the amount of compensation is graduated somewhat by the duties and somewhat by the responsibilities of the situation. In cases of moderate amount five per cent. on the receipts and disbursements has been allowed, which in this case would have amounted to something like $25,000 or $30,000 a year. But where the amounts received and disbursed are large, it is not usual to allow a percentage, but to fix the compensation in some other manner."

The learned Judge then cites Price vs. White, 1 Bailey Eq., 280; note to 2 Daniell Ch. Pr. 1435; and Day vs. Croft, 2 Beavan, 488 * * * and proceeds,

"Where a Receiver is a manager as well as a mere Receiver, his duties and responsibilities are largely increased, and the management of a business like that of a railroad is one of the most difficult and responsible duties that a Receiver is charged with. It requires a man of first rate qualities and attainments.

"Now, we have it in proof that the railroad presidents of the country receive various sums from $3,000 to $20,000 a year, many of $5,000, some of $10,000, a few above $10,000. Most of the defendants' witnesses think that $5,000 a year would be ample compensation to the Receiver for his services, whilst most of the witnesses called for the Receiver

think that $15,000 coin is not any too much; that he saved more than that to the road, etc.

"The Receiver's income before his appointment was, by the estimation of one witness, about $7,000 a year; said to be of a permanent character; all of which he was obliged to give up when he assumed the duties of the receivership; and he himself says that he would not have consented to take the office for less than $15,000 a year. The previous salaries given by the defendant railroad company have been referred to as being only $5,000, and sometimes not so much as that.

"In view of all this evidence of the assistance which the Receiver had around him, and of the principles which the law lays down with regard to the compensation of Receiver, I am inclined to think that $10,000 in coin (May, 1870) would be a fair rate of compensation in this case. It seems to me that $15,000 is large, larger than what any (except two or three of the presidents of our most important railroads in the country) receive. It also seems to me that the peculiar duties, responsibilities and and accountability of a Receiver entitle him to a larger amount than would be demanded by the head officer or an ordinary railroad of this size and business. An allowance of $10,000 coin per annum will therefore be made for the Receiver."

An appeal was taken from this decree, as to other items allowed by it, to this Court. But the question of the Receiver's fees does not appear to have been here mooted.

S. C., 93 U. S., 352.

(*c*) In the case of the Jackson Railroad, the Circuit Court of Louisiana allowed $20,000 per annum.

Master's report, fol. 1103.
Testimony, fol. 1133.

(*d*) Many other cases were referred to in the testimony,

Fols. 1134, 2562, 2643, 2649,

and are alluded to by the Master.

Fol. 1104.

They show a very great diversity of amount, the differ-

ence depending neither upon the length of the road nor the amount of money, and make manifest that it is the amount and character of the service and capacity of the officer and benefit received, all of which are and should be taken into consideration by the Court.

(*e*) While the compensation allowed by the Louisiana statutes to executors, whose duties are neither so onerous nor so responsible, are not controlling, they furnish a fitting illustration of what the law regards as reasonable. At the rate prescribed in such cases, the amount awarded would be nearly twice as great.

Vide Judge Billings' opinion, *supra*.

Second.

The compensation to be awarded to their own Receivers and to trustees for services rendered in foreclosing mortgages in the Circuit Courts, and for all incidental services, is within the discretion of those Courts.

It cannot be made to appear that the action of the Circuit Court in this case was arbitrary, partial or dishonest. Unless that is shown courts of last resort will not review the exercise by inferior Courts of a discretion which properly belongs to them.

Hinckley vs. The R. R. Co., 100 U. S., 153, 156.

"Two objections are taken by the appellant to the account by the Master.

"The first is, that for nearly two years' service the Master allowed him only $10,000, whereas he ought to have allowed him $1,000 a month.

"The principal witnesses of appellant to sustain this exception are the gentlemen who were themselves receivers of other roads, and thought they rightfully received $900 in one case and $1,000 in the other, per month. Perhaps they were the best judges of the value of their own services; but such is not always the case, and there is conflicting testimony, *and as this is the first time* we have been called upon to review the allowance made to railroad Receivers by

the Circuit Courts, we do not see that the economical administration of insolvent companies will be promoted or that justice requires a higher rate of compensation than these courts generally give, *to whose discretion the subject must be largely remitted.*"

Totten's Appeal, 40 Pa. St., 385.

HEAD NOTE. "On a bill and answer, a Master in Chancery was appointed to take an account between the parties: who, after many meetings before the Master, amicably arranged their differences, and discontinued the proceedings in equity, before the filing of the report, which is, accordingly, returned with the testimony, but without an account. The fees charged by the Master being excepted to, the Court, after argument, confirmed the report, and ordered them to be paid on or before a given time by the complainant, who appealed from that decree. Held, that the Court below were the best judges of the amount due the Master, under the circumstances, and that where it appeared that the Master had much labor and trouble in investigating the affairs of the parties, the order of the Court below would not be interfered with, even if it were such a final decree as is the subject of an appeal to the Supreme Court."

Wetmore vs. Parker, 52 N. Y., 450, 467:

"Objection is made to the allowance to the executors for counsel fees. * * * The decision (Downing vs. Marshall, 37 N. Y., 380) also holds that this Court may review, on appeal, the amount of such allowances. I think this still more doubtful, but, assuming it to be correct, there is nothing in the case which we can adjudge that the allowances were extravagant. The Court evidently intended to make a full, if not a liberal allowance; but in these days (April, 1873) of high prices and depreciated paper currency, we should feel disinclined to interfere with the judgment of the Court below as to the amount, unless it plainly appeared to be unreasonable and arbitrary. * * * An even if, as an original question, we should fix the amount at a somewhat smaller figure, the difference would not justify us in interfering with it upon this appeal."

Forrest vs. Forrest, 25 N. Y., 501, 512, 518:

The statute provides that the Court may order the defendant "to provide such suitable allowance to the complainant for her support as the Court shall deem just, having regard to the circumstances of the parties respectively. In view of the circumstances developed in the case, the defendant's wealth and the plaintiff's need, though we might consider the allowance somewhat large, we cannot say that the discretion of the Court below was so arbitrarily exercised as to amount to an abuse of judicial discretion. If not, there is no question of law to be reviewed in this Court. * * * The allowance for permanent alimony, and from what date it shall commence, as has been said, are questions resting in the discretion of the Court. There is no other rule or criterion than the *boni viri arbitrium*. As it is a judicial, and not an arbitrary discretion to be exercised, I do not say that there may not be an appeal from such an order. The power, must, however, be shown to have been arbitrarily exercised. Otherwise the law does not contemplate a review of such decisions in this Court."

Third.

Any reduction of the allowances would not increase the amount coming to Williams as a first mortgage bondholder, and would give nothing to second mortgage bondholders or to Williams as their trustee. Neither as holder of first or second mortgage bonds, nor as trustee of the second mortgage, has Williams any standing to claim error in the orders appealed from.

1. By agreements dated December 16, 1879 (pp. 1198 *et seq.*), and February 10, 1880 (pp. 579 *et seq.*), (for signatures to the agreement of February 10, 1880, *vide* fol. 2738), George Bliss, Lewis A. von Hoffman and Oliver Ames were appointed a purchasing committee to represent the first mortgage bondholders. Those bondholders agreed (p. 580) to accept, bond for bond for such first mortgage bonds

and all coupons held by them respectively, six per cent. lawful bonds of the Louisville & Nashville Railroad Co., &c., &c.

Having agreed to receive and having received these bonds, Williams, as first mortgage bondholder, cannot benefit by succeeding upon this appeal.

Williams' claim is that he held 582 of the first mortgage bonds.

His Exceptions to the Master's Reformed Report, p. 1237.

By the proceedings for the trustees discharge
Petition, Suppl. Rec., p. 3,
Statement of Trustees, Suppl. Rec., p. 5,

it appears that at the sale (Suppl. Rec., folio 8), Messrs. Bliss, Von Hoffmann and Ames, who were the purchasing committee, owned 3868 bonds. This included any Williams' bonds. It only left of the entire issue 132 bonds in the hands of parties, who had not joined in the purchasing agreement.

Williams having thus in compliance with the purchasing agreement surrendered his bonds to the purchasing committee, and having received Louisville and Nashville bonds for his bonds he cannot, as a bondholder, benefit by any result of this appeal.

2. As has previously appeared, the proceeds of sale of the mortgaged premises fail, by over $3,000,000, to pay the amount due upon the first mortgage bonds.

If no allowance had been made to the trustees and Receivers or to Judge Campbell, still neither the second mortgage bondholders nor their trustees could have received a penny.

3. It is only as a trustee for the second mortgage bonds that Williams is a party to the record. In claiming a right of appeal in consequence, Williams makes manifest that he is perverting his position as trustee for the second mortgage bondholders to aid his personal position and interest.

Fourth.

It is only as purchasers under the purchasing agreements that Williams or Williams and Thomson are interested in reducing the allowances to the trustees and receivers, and to their counsel.

As purchasers they have no right of appeal for various reasons.

(*a*) They are no parties to the record.

(*b*) They are residents of New York, where the trustees and receivers reside. The Court has no jurisdiction.

As to Williams, the decree recognizes and determines this.

Decree p. 573.

(*c*) Questions arising between the purchasers and either the trustees and receivers or the holders of the first mortgage bonds, have no relation to the issues in the cause. The agreement is no part of the proceedings in the cause. Any rights or claims under it can be enforced, and can only be enforced either in the mode provided for by it, or in the ordinary way; that is to say, by a distinct legal proceeding, instituted for the purpose.

(*d*) By the purchasing agreements, it is provided "that the lawful fees, charges and expenses of the receivers and trustees shall be paid in cash by the purchasers" (fol. 1060).

It is further provided that unless the same are fixed by agreement, they shall be decreed by *the Court* (fol. 1060), *i. e.* by the Circuit Court, in which the cause was pending, and which is the only Court referred to in the purchasing agreement. The whole tenor of the agreement shows that the object of the parties was to have a summary disposition of all questions which might arise under the purchasing agreement. For that purpose, in various forms of expression, it is provided that all questions shall be disposed of by the Circuit Court, and where necessary a mode of submission is arranged.

It is in pursuance of this provision of the agreement that the orders appealed from were made. The Court, in so far

as questions between the purchasers and the bondholders or their trustees were concerned, acted as an arbitrator, obtaining its jurisdiction from the agreement, and from its determination there can be no appeal.

1. Though the Court might have had jurisdiction as a court of the subject matter of the suit, it is enough to constitute it an arbitrator, that the issues be by consent brought before it in an irregular and extra-judicial manner; and this notwithstanding neither the parties nor the Court intended an arbitrament.

Waters vs. McNabb, 30 Ga., 672.

Pending the return day of a writ of *habeas corpus*, the following order was by consent entered in the Court where the order was returnable. "Upon the consent and agreement of counsel here in Court, it is ordered that this case be referred to the decision of the Hon. A. A. Allen, Judge of the Superior Court of the Southwest Circuit, in Bainbridge, on Monday morning at 10 o'clock, and that the witnesses attend the court at that time." From the decision of Judge Allen a writ of error was taken, which the Supreme Court dismissed saying:

"The question did not properly come before him by operation of law, or by the requirement of the law. His was not the tribunal appointed by the law to hear and determine the question in that case, but it was returnable and triable by the inferior Court. Therefore his decision on the premises was not such a 'decision, sentence or decree' from which a writ of error lies, under the organic law of this Court. A writ of error lies only to such judgment, &c., as are made by the Court as a court, and which come before and are tried by him in the usual course of proceeding, as provided for by law, and not upon those that, like this, are extra-judicial and come before and are decided by him on the agreement or reference of the parties, no more than if the question had been referred to or decided by any other person."

Walworth County Bank vs. The Trust Co., 22 Wis., 231.

"This case was referred to the Judge of the Circuit

Court in which the action was pending, in these words: 'It is hereby stipulated that this action be referred to Hon. Wm. P. Lyon, J., as sole Referee, to hear and determine, and that on filing his report judgment may be entered with the same force and effect as upon the verdict of a jury.' The Judge of a court being an improper person to act as referee, the reference to him operated as a discontinuance of the action, and the judgment entered on his report can only be sustained on the ground that it is expressly provided for in the stipulation. It is equivalent to a submission to arbitration at common law, with this difference only, that when there is a stipulation for judgment on the report, judgment may be so entered as upon a plea of confession. It being a mere arbitration at common law and not under the statute, it follows that neither the court in which the judgment is entered, nor this court, has any power to revise the report of the Referee. The Court will not do so. * * * If the intention of the closing stipulation was to give the Court the same power and control over the report as over the verdict of a jury, still the stipulation would be useless for that purpose. The courts will not take jurisdiction to revise or set aside the award of an arbitrator upon the mere agreement of the parties." (Afterwards, on the affidavit of counsel and the certificate of the Hon. Wm. P. Lyon, the Judge, to the effect that by the stipulation only an ordinary reference under the statute was intended, and that the express intention was to leave the way open for an appeal, a motion was made for a rehearing, which the Court denied.)

Graham vs. Bayne, 18 How., 60.

GRIER, J.: "If the parties agree to submit the trial, both of the fact and law, to the Judge, they constitute him an arbitrator or referee, whose award must be final and conclusive between them; but no consent can constitute this Court appellate arbitrators."

Harrison vs. Wright, 13 M. & W., 816.

PARKE, B.: "No doubt the order is bad as a proceeding under the Interpleader Act for want of a statement of con-

sent upon the face of it; but the parties agreed to be bound by the decision of the Judge as to whom the goods belonged, and the order is good and final as between the parties upon that question." (This amounted to holding that the waiver of this jurisdictional defect made the Judge a final arbitrator between the parties).

2. It is competent for parties expressly to stipulate that no appeal shall be taken from the decision of the Court in which the action is pending.

Townsend vs. The Company, 15 N. Y., 587.
Wheeler vs. Mining Co., 10 Nevada, 200.

In the case at Bar, no express stipulation was made, but the reason and the effect of what was done were the same. The parties desired to avoid not merely the delay of an appeal, but the delay as well of the usual procedure in the lower Court, and therefore by agreement provided for a summary determination of their rights there. It is not to be presumed that the parties making such careful provision to avoid a few weeks' delay in the lower Court, at the same time intended an appeal and the two or three years' delay consequent thereupon. If their agreement be well capable of the other and more reasonable construction, the Court will not impute to them so irrational an arrangement as the other would involve.

3. The question upon which the present case turns, so far as can be claimed here for any point which has never been passed upon by this Court and which necessarily depends so much upon the peculiar facts of each case, has already been decided in favor of the appellees. The following are believed to be the only cases in which a similar state of facts has come up for adjudication.

Elvin vs- Drummond, 4 Bing., 415.

The defendant confessed judgment and agreed that the costs should be determined by the prothonotary. The Court above threw out the appeal from his decision, holding that he had not been designated to tax simply the legal costs, but that the parties had made him an arbitrator.

Their agreement, in other words, the Court would not construe as simply clothing him with the function invested in him by law when it was capable of the other construction.

Harrington vs. Harrington, 15 Georgia, 561.

The head note is as follows:

"Where by the record it appears that an order is taken referring a case stated to the Judge of the Superior Court rather as an arbitrator than as contituting the Court, and where by the terms of the reference it appears that the decision of the Judge was contemplated as final and no provision was made for suing out a writ of error by either party, *held* that this was not such a decision, &c., as was contemplated by the law organizing this Court, and that the writ of error should be dismissed."

"It was agreed in between the parties," says the report, that the facts be submitted to His Honor, W. C. PERKINS, and if the Court should decide that the negro is a part of the estate, the administratrix was to relinquish her claim and pay the costs. If the Court should decide her claim to be good, the rule to be discharged."

BY THE COURT: "This record shows that the agreement was to refer this case to Judge PERKINS as a sort of arbitrator, and not to the Superior Court. There was no reservation, as the order of reference of the right of either party to except and bring his writ of error, and altogether, it impresses us as very plain that the reference was made in the manner in which it was, for the purpose of obtaining a speedy and final disposition of the case by decision of Judge PERKINS."

Hughes' Administrator vs. Peaslee, 50 Pa. St., 257.

The parties stipulated as follows: "It is agreed that this case shall be submitted to His Honor Judge GRAHAM, upon the depositions and admitted facts, he to render such judgment therein as he shall consider right and proper, the judgment as entered to have the same effect as if entered on a judgment of a jury finding the facts." Judgment was entered for plaintiff for $296, which was the error assigned by defendant.

Per Cur. "The parties agreed to leave their case to Judge GRAHAM to decide it upon depositions and admitted facts that are not certified to us under any bill of exception, and of which therefore we can take no notice. Nor did the submission stipulate for a writ of error by either party. Such a submission was an expeditious and convenient mode of settling the dispute of the parties, and another great merit of it was that it was final. No writ of error lies to such an award of a referee, and no bill of exceptions was or could be sealed by the Referee to place the evidence before us."

Ex parte Wilson, 7 L. R., Ch. 45.

Mr. Wilson claimed to be an equitable mortgagee of certain property belonging to the society by a deposit of deeds made by the trustees. The society's official liquidator disputed the validity of the mortgagee, whereupon an agreement was entered into between the parties. This agreement contained provisions for realizing the property and carrying the money to a separate account until the question as to the right to the same should have been decided by the Court of Chancery, and it contained the following clause: "The rights of the parties here shall be determined as they existed immediately before signing and entering into this agreement, and shall be fully and effectually determined in a summary manner by the Judge acting in the matter of the winding up of the said society."

Vice Chancellor BACON having given a decision substantially in favor of Mr. Wilson, the official liquidator appealed.

Lord Justice JAMES: "I am of opinion that we have no jurisdiction to entertain this appeal. The parties have agreed to have all questions between them decided in a summary way by the Judge who is acting in the winding up. I interpret that as meaning the Judge personally, and, as it seems to me, the intention of the parties was to avoid an appeal.

"I desire, however, that it should be understood that I decide upon the intention of the parties, as aforesaid, in the agreement. If they had said they referred their differences to the Court of Chancery in the winding up, the

case would have been different. The appeal must be dismissed with costs."

Lord Justice MELLISH: "I agree."

Vide also,

Waters vs. McNabb, 30 Georgia, 672, *supra.*
Bank vs. Trust Co., 22 Wisc., 231, *supra.*
Harrison vs. Wright, 13 M. & W., 816, *supra.*

Last.

The appeal should be dismissed; or the orders appealed from should be affirmed with costs to the appellees.

JNO. E. PARSONS,
Of Counsel for the Appellees.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 90.

WILLIAM S. WILLIAMS and DAVID THOMPSON, *Partners as* WILLIAMS & THOMPSON, and WILLIAM S. WILLIAMS, individually and as Trustee,

Appellants.

vs.

EDWIN D. MORGAN and JAMES A. RAYNOR, individually and as Trustees and Receivers, *et al.*,

BRIEF FOR EXECUTORS OF EDWIN D. MORGAN, DECEASED.

RESPONDENTS.

GEORGE DE FOREST LORD,
OF COUNSEL.

1

U. S. SUPREME COURT.

WILLIAM S. WILLIAMS, *et al.*,

vs.

EDWIN D. MORGAN, *et al.*

2

Brief on behalf of E. D. Morgan, Solon Humphries, John T. Terry and Henry Day as Executors of Edwin D. Morgan, deceased. Respondents.

STATEMENT.

3

This is an appeal from an order made by the Circuit Court for the District of Louisiana, fixing compensation for services of the defendant Raynor and the services of the deceased defendant Morgan, as Trustees and Receivers of the New Orleans, Mobile and Texas Railroad Company.

The order appealed from is on page 1237 of Record.

It confirmed a report of a master to whom the question of such compensation, with other matters, had been referred.

4 The first order of reference on this subject was made March 9th, 1880.

(Record p. 574.)

The master's first report was made May 3, 1880.
(Record pp. 613-616.)

Its perusal will show that Messrs. Raynor and Morgan (the Trustees and Receivers) originally applied for (together) $129,166 80/100 but that, on their claim being opposed, they, by consent of all parties, withdrew this claim, and presented a new one, each claiming $75,
5 000 80-100, also that the master reported in favor of allowing them *jointly* only the sum of $25,677.24.

The Trustees and Receivers excepted to this report May 3, 1880.

(Record p. 1170.)

On the hearing the Circuit Judge referred it back to the Master directing him to allow separate amounts to each trustee, viz., $10,000, per annum to Edwin D Morgan, and $15,000 per annum to J. A. Raynor. Order dated May 8, 1880.

(Record, p. 1232.)

6 The master reported accordingly adjusting the compensation of E. D. Morgan, in accordance with these instructions at $52,722.15, and that of J. A. Raynor at $79,083.38, report dated May 8, 1880.

(Record p. 1236.)

To this report the present appellants on the same day filed exceptions, which were dismissed by the Court on May 17, 1880, and the present appeal is from that order.

(Record pp. 1237, 1238.)

This appeal does not involve the merits of the main action, which was a suit in Equity for the foreclosure of a mortgage made January 1, 1869, by the New Orleans, Mobile and Chattanooga Railroad Company, to Oakes Ames and Edwin D. Morgan, as trustees, to secure bonds to the amount of $4,000,000, all of which were outstanding when the bill was filed. 7

The name of the mortgagor company was subsequently changed to the New Orleans, Mobile and Texas Railroad Company, and Oakes Ames having died, the defendant, James A. Raynor, was duly substituted as trustee in his place, all before the filing of the Bill.

The mortgage itself appears in full. 8

(Record, pp. 24, 41.)

Attention is particularly invited to those portions which prescribe the powers and duties of the trustees in taking possession in case of default.

(Record, p. 35.)

By this it will appear that the mortgagors authorized, and *invited*, the trustees in such case, not only, to operate the road as it might stand when they should take possession, but to use their judgment and skill in *altering*, *adding to*, and *improving* the property, all of which, if successful, would necessarily inure to the benefit (1.) of the bondholders, and (2.) of the stockholders. 9

The company defaulted on its interest due July 1st, 1874, and on or before March 16th, 1875, the directors, acting, it would appear, on the demand of a "considerable number of the bondholders" (Record, p. 17) formally surrendered possession to the trustees.

(Record, p. 15.)

10 The bill was filed March 12, 1875, and on March 17, 1875, the trustees were duly appointed Receivers by order of Court.

(Record, pp. 16–18.)

From early in 1875, down to the sale in March, 1880, they held possession of and operated the road, superintending and directing its ordinary running; defending lawsuits; insisting upon its rights and protecting its property; investigating its condition; strengthening its road-bed; replacing its ties and rails throughout; rebuilding its principal bridges with iron instead
11 of wood; selecting and adopting, at considerable risk, a special method of creosoting timber so that it could be safely used for piling in the peculiar localities traversed by this road, and in short, bringing to bear upon the property all the business experience, judgment, skill and foresight which were necessary to (and which in fact did) rescue the road from its perilous condition and make it a prosperous and valuable road.

The excellence of the trustees' management was never questioned, but, after five years had elapsed, a number of the bondholders began to organize for the purpose of purchasing the road. On December 16th,
12 1879, they appointed a committee consisting of George Bliss, L. A. Van Hoffman and Oliver Ames, to purchase the road at the foreclosure sale upon specified conditions.

(Record, pp. 1198–1202.)

A subsequent and additional agreement was made, February 10, 1880, between the same bondholders (with others)—the above named purchasing committee—and Williams and Thomson the appellees—which provided for a sale of the road to the last named per-

sons, *through the intervention of the said purchasing committee.* 13

The text of this agreement is found at

(Record, pp. 579-586.)

On April 23, 1880, Williams individually—claiming to be a holder of bonds—and Williams and Thomson—claiming to have rights under the last-named agreement—filed separate petitions, asking leave to appear before the master on the reference to adjust the allowances to the trustees, &c.

These petitions were allowed, they appeared before 14
the master and took exceptions to the allowances as already explained.

(Record, pp. 610–612.)

The mortgaged property was duly sold under the decree, April 24, 1880, to Bliss, Von Hoffman and Ames, the Bondholders Purchasing Committee, for $4,000,000.

(Record, pp. 1171, 1172,)

which sale was afterwards carried out by the execution 15
of proper conveyances.

This sale was confirmed 1880.

(Record, p. .)

and with this order the foreclosure proceedings end.

Upon these facts, it is claimed that the order appealed from should be affirmed.

16

POINTS.

FIRST POINT.

Williams and Thomson jointly, have no standing in this cause, and no right to contest the question here involved.

1. It no where appears that they have any rights (conjointly) except such as may accrue to them from the agreement of February 10, 1880.

17 Record, pp. 579–586.

Under that agreement they were merely to purchase *from the committee* the property which was to be sold under foreclosure, and which the committee agreed to buy in, and were to pay for it (*a.*) in *Louisville and Nashville Bonds*, an amount equal to the bonds represented by the Bondholders who had signed that agreement, and (*b.*) *in cash* an amount equal to the expenses and prior liens, as they should be ascertained by the Court in the foreclosure proceedings, and to the proportion of the sum bid to which those
18 Bondholders would be entitled, who were not parties to that agreement.

As such *purchasers* they did not become parties to the foreclosure suit, and were not entitled to be heard on the distribution of the purchase money.

They had a right to the conveyance of the property, on payment of the sum bid. But they had no right to inquire what the Court did with that purchase money.

2. This is equally true whether it be considered that, in making the actual bid at the sale, the committee were acting (in that particular transaction) as agents for the *Bondholders*, or as agents for *Williams and Thomson*. 19

Certainly if the committee so acted *only* as agents for the Bondholders, and if Williams and Thomson simply bought from them *at second hand*, the latter cannot follow the purchase money any further. What the committee did with it lies wholly between them and their constituents.

20

But it would make no difference even if the committee had bid as agents for Williams and Thomson. If the latter had bid in their own names, that would not have authorized them to meddle with the Court's distribution of the uprchase money—nor to dispute the compensation of the trustees.

The latter question concerns only the bondholders and stockholders of the defunct corporation.

They alone could object—and Williams and Thomson *as purchasers* are strangers to the controversy. 21

3. The evident purpose and intention of the agreement of February 10, 1880, was not to change in any respect the position of the trustees and Receivers, or to furnish them with a new (and substituted) set of constituents to whom they, should be responsible for their previous acts, but only to insure to the *purchasers* the property in question, upon terms which involved (among

22 other things) the payment by them in cash, *on account of the sum bid*, such compensation as the Court should fix as between the trustees and the bondholders *for whom they had been acting*.

It was never intended by the agreement of February 10, 1880, to alter the relations already existing between any of the parties to the foreclosure litigation. Those proceedings were to be carried through *as between the original parties*, until they were ended, and *then* the *purchasers* (Williams and Thomson) were to take the property at the stipulated price.

23

4. The provision contained in that agreement—that: "Upon such exchange being made, the said first "mortgage bonds shall become the property of "the purchasers"—does not alter this conclusion.

Those bonds were evidently to be transferred only as a possible muniment of title—not for any other purpose.

Before the appellants would be entitled to 24 these bonds, the whole transaction must have been *completed*—the purchase money all paid, and the title passed to the purchasers.

Besides, the bonds to which the appellants would thus become entitled would necessarily come to them subject to that very agreement—under which the holders of those bonds would never be entitled to one dollar of the purchase money, but only to an equivalent amount in bonds of the Louisville and Nashville Railroad—which *would have already been paid to them*.

As *such* bondholders, therefore, they would not be entitled to anything more—even if the net amount of the $4,000,000 purchase money were increased, by diminishing the amount of expenses. 25

5. Therefore, in any event, Williams and Thomson *as partners*, have no standing in Court upon this question.

SECOND POINT. 26

Neither has Williams, as Trustee, any right to contest this question.

His only claim to be Trustee rests upon the execution to him and Oliver Ames a second mortgage on this property.

(Record, pp. 97, 191.)

1. By the decree of sale, it appears that the whole principal sum secured by the mortgage was due (4,000,000), and also interest accrued (1,903,040), making a total of $5,903,040, in addition to Receiver's certificates (700,000), and the expenses of administration. 27

(Record, p. 570.)

Evidently, therefore, Williams, as Trustee, can have no possible interest in re-adjusting the distribution of the $4,000,000 purchase money.

No part of it could ever become applicable to

the second mortgage, and therefore, no rights which he represents as Trustee could have been affected by the order appealed from, and he has not been aggrieved thereby.

2. Whatever rights passed under the second mortgage were vested in Williams and Ames conjointly, and Williams alone cannot claim to represent them.

3. Whatever rights were vested in Williams and Ames, as Trustees under the second mortgage, have been conveyed by them (in accordance with the decree of sale) to the "New Orleans, Mobile and Texas R. R. Co., as reorganized."

(Record, pp. 1203–1215.)

THIRD POINT.

Williams individually, although a bondholder, has no right to contest, this allowance; or to ask that the action of the Circuit Court should be reviewed.

1. It distinctly appears by the petition, upon which he applied to the Court below for leave to appear and contest these allowances, that Williams, as a *bondholder*, was a party to the agreement of February 10, 1880. He therein refers to his *signature* to that agreement.

(Record, pp. 610, 611.)

It therefore follows that his rights as such

bondholder are all subject to the provisions of 31
that agreement.

This renders it unnecessary to consider what his rights as such bondholder would have been if he had not signed it.

2. As a bondholder, party to that agreement, Williams, with others, "*irrevocably*" empowered "the *Committee* (i. e. Messrs. Bliss, von Hoffman and Ames)" "to act for them, and each of "them in *all matters* connected with the arrange- "ments herein" (i. e. in said agreement) provided 32
"for."

(Record, p. 580.)

Some of the chief *arrangements* thus provided for, related to procuring a satisfactory indemnity to the Trustees and Receivers against the liabilities they might have incurred, and also to the ascertainment of the prior liens which should take precedence over the mortgage, including the Receivers certificates, and the *charges and expenses* of the Receivers and Trustees, all of which the *purchasers* were to pay for in cash. 33
All of these items might either be "*fixed by* "*agreement*," or *decreed by the Court*."

(Record, p. 583.)

Plainly, in dealing with all these matters, the signing bondholders were to be represented by the *Committee*. They abandoned their right of *individual action*.

Therefore, if it had been thought best that

the compensation to the Trustees—which was a matter between them and the bondholders as their chief constituents—*should* be "*fixed by agreement*," that agreement plainly must have been made by the *Committee* alone. And if so made, no individual bondholder could repudiate the arrangement.

So, in like manner, if the question of compensation were submitted to the Court, in that proceeding, as in every other proceeding contemplated in that agreement—the *Committee* were to represent the bondholders. *They* were to pass upon what was fair and reasonable, and if *they* (acting in the interest of *all* the bondholders) did not think proper to object to the allowances made by the Court, and thus to hamper the proceedings, and incur expense, by an appeal therefrom, no individual bondholder had a right to override their conclusion, or reverse their action.

A very little reflection will show that this was a necessary effect—and indeed one of the essential objects—of the agreement of February 10, 1880. A complicated transaction was to be carried through, involving not only contemplated negotiations with the purchasers, but the adjustment of various matters between the Trustees and their constituents, the settlement of which was an important element in the terms of the proposed sale. However, this adjustment should be made, whether by judicial proceeding, or by agreement *inter partes;* it was essential that some one should act for all the signing bondholders collectively, and that the latter should be bound by what was so done. This was one of the principal functions of the Committee, and if the Committee did not

object to the sums allowed, no *individual bondholder could*. 37

If this argument is correct, then Williams cannot interfere with these allowances, which the *Committee*—all of whom were bondholders, and had as good a standing in Court as he has have—acquiesced in.

And it is a significant fact that *Williams alone* of all the bondholders, including those who did not sign the agreement of February 10, 1880, as well as those who did, objects to those allowances Any bondholder who had *not* signed that agreement would have his share of the proceeds increased, by reducing the allowances. Yet not one of them contests the amount allowed. The only contestant bondholder is one whose real interest is *as a purchaser* in diminishing the amount of *cash* purchase money which he has to pay. And, in his anxiety to do that, he seeks to supplant the action of a committee to whom he, with others, had given irrevocable power over the subject. 38

3. But, again, no bondholder who was a party to the agreement of February 10, 1880, has—or can have—*as such*, any interest whatever in fixing the amounts allowed to the trustees and receivers. Whether those amounts are larger or smaller, his rights are in no way affected,—and he cannot be *aggrieved* by the order appealed from. 39

a. It is important here to distinguish clearly between Williams as a *bondholder*, and Williams as one of the *purchasers*.

40 In the latter capacity he *has* a very plain interest in reducing the amount of cash which he is to pay, because as the entire balance of the purchaser's, bid is to be satisfied by the delivery of Louisville and Nashville bonds to the extent of $4,000,000, and as the *purchasers* are to have $1,000,000 of similar bonds in consideration of *the cash* which they pay on their bid, it would clearly be a very good thing for Williams if, by *reducing the amount the of Trustees compensation* he could thus reduce the amount which he and Thomson would pay as the price of this $1,000,000 of Louisville and Nashville bonds.

41 It has been argued above in the first point that *as purchasers*—however, they may be interested practically in the question of these allowances—neither Williams or Thompson can be heard on the matter.

What is *now* asserted is that *Williams as a bondholder who had signed the agreement of February 10th*, 1880, is equally without right to be heard *because as such bondholder he is not aggrieved by the order appealed from.*

42 *b.* It will help to test this proposition, if we consider Williams rights as such bondholder, as they would be if Thomson alone had been the purchaser.

What would those rights be?

Keeping the agreement of February 10th, 1880, always in view, it would evidently make no possible difference to him whether the amounts allowed to the Trustees

were $25,000 or $125,000. *Theoretically*, indeed 43
his dividend on his bonds would be larger in the former case than in the latter. But *practically* in either case he would receive—not a sum in cash at all, whether larger or smaller, but—only an amount of Louisville and Nashville bonds, equal to the old bonds for which he signed the purchasing agreement.

It is evident, therefore, that no other bondholder, *except Williams*, who was party to that agreement, has been (or could be) aggrieved by the order appealed from, and it is equally evident that Williams, as a *bondholder*, can have no 44
grievances where his fellow-bondholders have none. And the inevitable conclusion is—corresponding wonderfully with the apparent facts of this case—that Williams here is trying to use his position as *bondholder*, in which he has suffered no injury, to help out his position as *purchaser*, in which he has no standing in Court.

It is respectfully submitted that such an attempt furnishes no sufficient ground for disturbing the order appealed from.

45

FOURTH POINT.

But, aside from all technical considerations, there is no ground for disturbing the order appealed from—on the merits.

1. Even though when costs and allowances have been awarded in the Court below payable

46 out of a fund which is being therein administered, this Court should entertain an appeal from its decision; yet it has always been reluctant to interfere in such matters with the discretion in trusted to the Court below.

Trustees vs. Greenough, 105 U. S. 537.

The reason for this hesitation is apparent, and rests on a good foundation.

The value of the services rendered is always a question of fact, and on such questions it is conceded that the action of the tribunal before
47 which the matter comes in the first instance is entitled to great weight, and should only be set aside in rare and exceptional cases.

The same doctrine has been often asserted and applied in other cases involving a similar discretion in the Court below.

In Cushmann vs. Ryan, I Story, C. Ct. 91, which was an appeal from the judgment of the District Court, awarding damages in the case of an assault and battery on board ship, which damages were said to be excessive, Judge Story thus
48 states the principle which should be applied here:

"In cases of this nature, where damages are "necessarily uncertain, and are incapable of being "ascertained by and precise rule, and, therefore, "unavoidably rest, in a great measure, in the exer-"cise of a sound discretion by the Court, upon all "the circumstances in evidence at the hering, it "is with extreme reluctance that the appelate "Court entertains any appeal; and it expects the "appellate to show beyond any rersonable doubt,

"that there has been some *clear mistake or error* 49
"*of the Court below*, either in promulgating an
"incorrect rule of law, or in awarding excessive
"damages; or that new evidence is now offered,
"which materially changes the original aspect of
"the case."

And further on he adds:

"But, as to the other point, where the damages
"or amount must necessarily rest in the sound
"discretion of the Court, as it does in salvage
"causes and causes of damage, the constant policy
"of the Courts of the United States, in the exer- 50
"cise of their appellate jurisdiction, *and especial-*
"*ly of the Supreme Court*, has been to discourage
"appeals upon slight and trivial grounds, and
"never to reverse the original decree, unless there
"has been a plain mistake of law, or a *gross* ex-
"cess in the amount or damage awarded."

* * * * * * *

"In the few cases of appeals of this sort, which
"have come *before* me, I have constantly been
"governed by this consideration; and I have
"never asked myself the question whether origi-
"nally I should have awarded exactly the same
"sum; but only whether I could discern a clear 51
"and unequivocal mistake or error in the Court
"below, either of law or of fact. And in
"every such case, I have always held the *onus*
"*probandi* to be on the appellant, to demonstrate
"beyond a reasonable doubt the mistake or error
"of law or of fact."

In the Narragansett 1 Blatch C. Ct., 211, which was a case of collision and salvage, Judge Nelson refused to interfere with the amount of the damage and allowances.

52 He said: "I have examined the several question presented in this cause, arising out of damages decreed by the Court below, and see no sufficient ground for disturbing the allowances made.

Some of the items appear large, but the principles upon which they have been allowed, seemed to be sustained by authority. I cannot interfere with the amount unless it is very *strikingly* out of proportion to the service or damage.

The Narragansett, 1 Blatch, 211.

53 So in a case of damage, where there is conflicting testimony in the Court below upon the amount of damages sustained, and there is evidence to sustain the decree, the Supreme Court will not reverse the decree merely upon a doubt created by conflicting testimony.

Phila., Wil. and Balt. R. Co., vs. Phila. and Havre de Grass Steam Towboat Co., 23 How 209.

2. The principle just referred to applies particularly
54 in this case, where the right of the appellees to compensation rests not only upon their position as Receivers appointed by the Court, but upon their position as trustees in possession under a mortgage which *entitled* them by its own terms to a reasonable compensation for their services.

(Record, p. 35.)

The decision appealed from in this case is like the finding of a jury, or of a Court having power to determine matters of fact, on a

question of the value of services upon a quantum meruit The same principles should govern this appeal. 55

The argument on this point is well put by the learned judge of the Court below, in his opinion which accompanied the order appealed from. No further attempt to elaborate it is necessary.

3. The rights of the Trustees to compensation resting, therefore (in a great measure) upon the agreement made (in the mortgage) between them on the one hand, and the company and the bondholders on the other, the appellants, so far as they are only *purchasers* of the property, deriving their rights from the agreement of February 10th, 1880, are strangers to the present controversy, and have no right to interfere in its adjustment. 56

4. But the services rendered by Edwin D. Morgan deceased, were well worth the sum allowed him.

From February, 1875, until May, 1880, he and his co-trustee had the entire charge and management of this railroad. They represented in themselves the entire corporate organization, fulfilling the functions and sustaining the responsibilities, which are usually divided between the President and Board of Directors in similar corporations. Although, in cases where it was possible to do so; they from time to time sought the protection of the Court for acts done or contemplated; yet, in a thousand ways, they necessarily assumed responsibilities and incur- 57

58 red *risks* which might have exposed them to serious personal liabilities. And, independent of all risks thus assumed, the business itself called for qualities and abilities which can always command a high grade of remuneration. Mere executive offices as ex gr those of superintendent, secretary, treasurer, and the like, may be filled by persons of ordinary training and limited ability. But only men of large capacity and extensive experience can successfully operate a railroad, and especially one requiring such peculiar treatment as the one now in question.

59 A perusal of the record—with all its suggestions of the practical questions with which the trustees had to cope—will sufficiently demonstrate the character of the special services which they had to render. But it goes without saying, that no record could possibly represent the innumerable claims upon the time, skill, good judgment and foresight of the trustees, which were involved in the practical rebuilding and the actual running of this road during the five years of the trustees' management.

These things should not be lost sight of, how-
60 ever, in the adjustment of their compensation.

Taking them into consideration—and giving due weight to the fact that the management has been eminently successful, and the company (and the bondholders) have been saved all expenses of president and directors—it seems impossible to hold that $25,000 per annum was too much to allow to the two trustees—or $10,000 of that allowance, too much for the deceased trustee.

And reference is here made again to the very

significant fact, that not one of the parties in interest has raised any objection to the allowances made—except the appellant Williams, whose interest in this question as purchaser is paramount to any which he may have as a bondholder under the mortgage. 61

Every person interested in this question—except the purchasers of the property—acquiesces in the distribution of the purchase money, which awards to the trustees the sum allowed them in the order appealed from.

Does not this indicate that this appeal is founded upon mere selfishness and not upon any just rule of compensation, which should be applied between the trustees and their constituents in this case. 62

5. The testimony taken on the question of the value of such services was quite volumnious, and was all before the Court when the order appealed from was made.

It is respectfully submitted, that it fully justified the allowances appealed from. 63

6. It is not desired to draw any distinction between the position of the two trustees.

But if any such distinction should be drawn by the Court it should not be overlooked, that the deceased trustee Morgan has received no other compensation whatever for his services, except the amount here allowed him.

And it is respectfully submitted that it is

64 enough to deprive the report of the master, which the order appealed from has overruled, of all claim to confidence, merely to state that for five years care of this defaulting railroad, and for all the services rendered by both trustees, he thought it sufficient to award to them jointly the sum of $5,000.

CONCLUSION.

The order appealed from should be affirmed with costs.

65 October 27th, 1883.

LORD, DAY & LORD,
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